



Home Office

Certification of protection and human rights claims under section 94 of the Nationality, Immigration and Asylum Act 2002 (clearly unfounded claims)

Version 7.0

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About this guidance

This guidance tells you about certification of protection and human rights claims as clearly unfounded.

This guidance is valid for claims decided on or after 28 June 2022.

Contacts

If you have any questions about the guidance and your line manager or senior caseworker cannot help you or you think that the guidance has factual errors, then email the Appeals Policy team.

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

Publication

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

- version **7.0**
- published for Home Office staff on **08 November 2023**

Changes from last version of this guidance

The guidance has been updated to reflect the fact that because there is no longer a right of appeal, granting leave does not prevent a claim being certified where it is clearly unfounded.

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Background

This section explains the meaning of certification and sets out the policy background.

Section 94(1) of the Nationality, Immigration and Asylum Act 2002 states that the Secretary of State may certify a protection or human rights claim as clearly unfounded.

In all cases where a protection and / or human rights claim is refused caseworkers must consider whether certification is appropriate and cases that are clearly unfounded should be certified unless an exception applies.

The Nationality and Borders Act 2022 removed the out of country right of appeal for any decisions certified under section 94 after 27 June 2022. This means that any decision certified after midnight on 27 June will not have a right of appeal against the decision.

Policy intention behind certification

The underlying policy intention when certifying protection and/ or human rights claims is to protect the integrity of the immigration system and deter unfounded claims by:

- preventing appeals that cannot succeed, where protection and human rights claims are clearly unfounded
- supporting the reduction in asylum support costs by enabling the claimant to be removed once a decision is made and certified

What is a Protection Claim?

A protection claim is a claim that removal of a person would breach the UK's obligations under the Refugee Convention or in respect of a person eligible for a grant of humanitarian protection (section 82(2)(a) of the 2002 act). Further guidance is available in the Rights of appeal guidance.

What is a human rights claim?

A human rights claim is a claim that to remove a person from or require them to leave the UK or to refuse them entry into the UK would be unlawful under [section 6 of the Human Rights Act 1998](#). Further guidance is available in the Rights of appeal guidance.

Should the claim be certified?

In all cases where a protection and/ or human rights claim is refused caseworkers must consider whether certification is appropriate and cases that are clearly unfounded should be certified unless an exception applies.

The legal test as to what amounts to a clearly unfounded claim is the same for claims certified on a case by case basis as for those from designated states.

Each claim must be considered on its individual merits and should only be certified if the caseworker is satisfied that the claim is clearly unfounded.

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Designated states

This section explains certification of claims where the claimant comes from a designated state.

[Section 94\(4\)](#) of the Nationality, Immigration and Asylum Act 2002, contains a [list of designated states](#).

Section 94(3) provides that when refusing a protection and/ or human rights claim from a person [entitled to reside](#) in one of the listed states, the Secretary of State must certify the claim unless satisfied that the claim is not clearly unfounded.

A state is included on the list ('designated') if there is in general in that state or part of it no serious risk of persecution of persons entitled to reside in that state or part of it. Where a person is entitled to reside in a designated state or part of it removal there will not in general contravene the UK's obligations under the European Convention on Human Rights (ECHR).

A state can be included on the list at 94(4) by section 94(5) which allows the Secretary of State for the Home Department (SSHD) to designate:

- all of a state
- a geographical part of a state
- a state in respect of a description of a person
- a geographical part of a state in respect of a description of a person

Where partial designation exists, only those cases that meet the designation criteria can be certified under section 94(3). However, caseworkers must consider certification under section 94(1) on a case-by-case basis where section 94(3) is not applicable.

Even though some human rights claims are not based on the conditions in the claimant's country of origin (for example Article 8 family and private life), the requirement to certify the claim unless satisfied that it is not clearly unfounded remains and the caseworker must apply section 94(3) in the same way as for a protection claim. Where a human rights claim is refused but is not clearly unfounded consideration must also be given as to whether it should be certified under section 94B. Following the Supreme Court case of [Kiarie and Byndloss](#) use of section 94B is currently suspended.

A protection and / or human rights claim made by someone from a designated state must still be considered on its individual merits and if the caseworker considers on the facts of the claim that it is not clearly unfounded, it should not be certified under section 94.

Certification of claims from designated states applies to all claims made on or after the date the state was designated. Any claims made before the date of designation are not subject to section 94(3) but may be certified on a case by case basis under 94(1).

Meaning of 'entitled to reside'

The term 'entitled to reside' includes:

- citizens
- dual nationals
- non-citizens who are normally resident in the state with a legal basis for residing there

Doubts about nationality or entitlement to reside

Where the claimant asserts that they are not entitled to reside in a designated state, the caseworker must consider whether there is evidence that they are entitled to reside there. See guidance on doubtful or disputed nationality.

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Case by case certification

This section explains certification of claims on a case-by-case basis.

Section 94(1) of the Nationality, Immigration and Asylum Act 2002 allows the Secretary of State to certify a protection and/ or human rights claim as clearly unfounded on a case by case basis.

A case can be certified under section 94(1) where the claimant is not entitled to reside in one of the designated states. It can also be used where the claimant is entitled to reside in a [designated state](#) but falls within a category not covered by the designation, as long as the claim is clearly unfounded on its facts.

Example: State A is designated for men only. The claimant is a woman entitled to reside in state A. Her claim is clearly unfounded. It should not be certified with reference to section 94(3), but if clearly unfounded it should be certified on a case by case basis.

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Further submissions

This section explains the interaction between further submissions under [paragraph 353 of the Immigration Rules](#) and certification.

Further submissions after a previous refusal of a protection or human rights claim should not be certified under section 94. Where further submissions are rejected and there is no fresh claim under paragraph 353 there is no claim to certify.

If further submissions are accepted as a fresh claim this means the claim has a realistic prospect of success at appeal so it cannot be clearly unfounded.

For guidance on applying paragraph 353 see the Further Submissions guidance.

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Meaning of ‘clearly unfounded’

This section explains how to decide whether a claim is ‘clearly unfounded’.

To be clearly unfounded a caseworker must be satisfied that the claim cannot, on any legitimate view, succeed.

The cases of Thangarasa and Yogathas [2002] UKHL 36 and ZL and VL v SSHD [2003] EWCA Civ 25 give the following guidance:

- a manifestly unfounded claim is a claim which is so clearly without substance that it is bound to fail
- it is possible for a claim to be manifestly unfounded even if it takes more than a cursory look at the evidence to come to a view that there is nothing of substance in it

Caseworkers must consider:

- the factual substance and detail of the claim
- how it stands with the known background data
- in the round whether it is capable of belief
- whether some part is capable of belief
- whether, if eventually believed in whole or part, it is capable of meeting the requirements of the Refugee Convention or Human Rights Convention.

Although these cases pre-date the introduction of humanitarian protection, the principles outlined in respect of considering clearly unfounded cases also apply to humanitarian protection and human rights claims.

A claim will be clearly unfounded where the caseworker assumes for the purpose of certification that the claimant is a credible witness and the claim is still bound to fail for other reasons, such as the country situation. For example, you accept a person has been threatened by a criminal gang, but there is unequivocal evidence that the gang has since been arrested and sentenced to a long period of imprisonment.

You can certify a claim on credibility grounds, but you must be satisfied that no one could reasonably believe the account. See the section on [Credibility](#) for guidance on this.

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Certifying cases involving children

This section explains how to comply with the duty to safeguard and promote the best interests of children when considering certification.

Section 55 of the Borders, Citizenship and Immigration Act 2009 requires the Home Office to carry out its immigration, asylum and nationality functions in a way that has regard to the need to safeguard and promote the welfare (or 'best interests') of children in the UK. In applying this guidance to cases involving a child in the UK, caseworkers must have due regard to this section 55 duty. This involves making sure that a child's best interests are a primary consideration in any decision affecting them. For further information on the key principles to take into account, see: Section 55 Children's Duty Guidance.

The presence of a child within a family does not prevent consideration of whether certification is appropriate. The best interests of a child are generally served by making sure that they are returned with their family to their country of origin or residence as soon as possible where a claim is unfounded. However, caseworkers must make sure they carefully consider the claim of the family as a whole and also as individuals. This includes the impact of certification on any children and whether the child may have a separate claim to remain, for example risk of female genital mutilation, in their own right. See the Dependants and former dependants' asylum instruction for further information.

Cases involving unaccompanied asylum seeking children (UASCs) can also be considered for certification if the claim is clearly unfounded.

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Credibility

This section tells you the circumstances in which credibility can be taken into account when considering whether to certify a claim.

Credibility should not be taken into account when considering whether to certify a claim unless the claim is so incredible that it is incapable of belief.

In *ZL and VL v SSHD* [2003] EWCA Civ 25 the Court of Appeal stated:

If on at least one legitimate view of the facts or the law the claim may succeed, the claim will not be clearly unfounded. If that point is reached, the decision-maker cannot conclude otherwise. He or she will by definition be satisfied that the claim is not clearly unfounded.

The Court went on to state:

Where an appellant's case does turn on credibility, the fact that the interviewer does not believe the appellant will not, of itself, justify a finding that a claim is clearly unfounded. In many immigration cases findings on credibility have been reversed on appeal. Only where the interviewing officer is satisfied that nobody could believe the appellant's story will it be appropriate to certify the claim as clearly unfounded on the ground of lack of credibility alone.

This means that where certification is being considered, credibility is only relevant if the caseworker is satisfied that no one could believe the individual's account. For example, if there is indisputable evidence which contradicts the claim or it is based on facts already considered and found not to be credible, and no new evidence has been produced to disturb that finding. Another way of putting this is that where the caseworker thinks the claim could be believed they must take the claim at its highest, accepting the account as being true for the purposes of deciding whether to certify.

It is of course still open to the caseworker to refuse the claim where they have substantial reasons for doubting credibility. The thing to remember is that the decision to refuse the claim and the decision to certify it are 2 different decisions to which different tests apply. Refusing the claim on the ground that it is not believed must not be confused with certifying the claim on the ground that nobody could believe it.

An allegation of deception is a credibility point and should be treated accordingly. Deception should not be taken into account when considering whether to certify a claim unless the caseworker is satisfied that nobody could believe the claimant's account that they did not use deception.

For example, where an Article 8 claimant has provided a certificate of English language competence in support of an application and there is evidence that the certificate was falsely obtained, it will be appropriate to take the deception into account when deciding to grant or refuse the claim. However, it will only be appropriate to take the deception into account for the purposes of certification if

nobody could believe that the certificate was obtained genuinely or that the applicant did not know about the deception when submitting the certificate.

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Examples of when a protection claim can be certified

This section provides examples of when a protection claim can be certified.

No fear of mistreatment

If a claimant raises nothing that could be considered as amounting to a fear of mistreatment on return, for example, where a person states they are fleeing poverty or unemployment.

No objective basis for feared mistreatment

If after taking account of the person's circumstances and the objective evidence, it is clear that there is no arguable basis that the feared mistreatment will arise on return. Where relevant, reference must be made to the appropriate country information and guidance reports in considering the claim. See: Country information and guidance.

Feared mistreatment does not amount to persecution

When it is clear from the objective evidence that the mistreatment feared, even if it did occur, would not amount to persecution or serious harm. The existence of previous mistreatment would not preclude certification if the treatment feared on return would not amount to persecution or serious harm.

Sufficiency of protection

It is not necessary to show that the state will eliminate all risk to the claimant. It is enough to show that it is willing and able to take effective steps to prevent persecution or serious harm. For example, a state that operates an effective legal system for detection, prosecution and punishment of persecutory acts is taking adequate steps to prevent persecution even if it cannot solve every crime or prevent every assault.

Where the claimed threat comes from rogue public officials (such as individual police officers acting outside their authority), the threshold is higher, but the claim would still be clearly unfounded if there is clear evidence that the state is able and willing to take action against those officials and provide protection against them. See: Assessing credibility and refugee status for further details.

Internal relocation

If a claim is in relation to the claimant's home area and internal relocation is available and it is reasonable to expect the claimant to relocate. This may apply if the claim is a fear of ill-treatment by non-state actors or rogue agents or where the authorities do

not control the entire country. For further details see: Assessing credibility and refugee status.

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[Examples of when a human rights claim can be certified](#)

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Examples of when a human rights claim can be certified

This section provides examples of when a human rights claim can be certified.

Caseworkers should consult the guidance *Considering Human Rights claims* for general information on the different human rights claims that can be made and how to consider them.

All the facts of the claim must be considered and a decision made on the claim before going on to consider certification.

Article 8 claims

Caseworkers must refer to *Family life (as a partner or parent), private life and exceptional circumstances* for guidance on considering Article 8 family and private life cases except in deportation cases. In criminal deportation cases, caseworkers must refer to *Criminality: Article 8 ECHR cases*.

The fact that the Article 8 claim falls to be refused and there are no exceptional circumstances (or very compelling circumstances in criminal deportation cases) does not mean that the claim should be certified. A claim can only be certified where it is clearly unfounded. A human rights claim must only be certified where it is so clearly without substance that it is bound to fail. The decision on whether to certify must take into account the family's claim as a whole and the individual circumstances of every applicant within it in their own right.

For example, a human rights claim may be suitable for certification where:

- there is a partner application but the claim does not raise any circumstances which suggest that family life with their partner could not continue overseas and there is no evidence of any exceptional circumstances
- the basis of the application is as a partner, but there is no evidence that the relationship is genuine or subsisting
- the basis of the application is as a partner with a dependent child but there is no evidence of a genuine and subsisting parental relationship between parent and child, for example, no evidence that the parent sees the child or has any involvement in their life
- the basis of the claim is as a parent but there is no evidence of a child

A claim based on other family relationships may be suitable for certification where:

- the Article 8 claim is based on a relationship other than partner, child or adult dependent relative, such as 2 adult siblings or a parent/ child relationship where the child is aged 18 or above, and there is no evidence of any arguably unusual level of dependency or exceptional features in the claim

A private life claim may be suitable for certification where there is a:

- claim based on limited job prospects in their country of origin
- claim that private life would be breached owing to a medical condition but no evidence of this condition has been provided, the condition is not serious or treatment is available in country of return
- claim that a student or worker would be unable to continue with their studies or work and there is no evidence of an established private life other than normal level of social interaction as a student or worker
- claim by an adult aged 25 and the claim does not raise any circumstances which suggest there would be significant obstacles to the claimant's integration into the country to which they would have to go if required to leave the UK, and there is no evidence of any exceptional circumstances

Caseworkers should note that the above are only examples of cases that may be suitable for certification and that each case must be assessed on its individual merits.

When considering whether to certify an Article 8 claim caseworkers are not simply applying the guidance on whether the claim should be refused. The mere fact that a claim falls to be refused does not mean the claim should be certified. For example, in a complex case the rules are not met and there are no exceptional circumstances the claim may nonetheless not be clearly unfounded even if the claim is refused.

Evidence for the purposes of certification can include claims made by a person in their application even where this is not supported by documentary evidence. However, where no documentation is provided and there is no explanation for the omission then it is open to caseworkers to make enquiries as to why documentary evidence has not been provided. In cases where a person has failed to provide evidence when they could reasonably be expected to do so the claim may be certified as clearly unfounded. This is provided the absence of documentary evidence means it is bound to fail and there are no other reasons as to why the claim should not be certified.

Examples of Article 8 claims not likely to be suitable for certification:

- there is a child of the family who is a British Citizen
- there is a child of the family who is not a British Citizen but has lived in the UK for 7 years or longer
- there is a child who is not British or who has been in the UK for less than 7 years, where there is evidence of potential exceptional circumstances or compassionate or compelling grounds that may mean it is in the child's best interests for them to remain in the UK
- there are obstacles to the applicant continuing family life outside the UK, but these obstacles are not insurmountable
- there is evidence of circumstances that may amount to exceptional circumstances (though the caseworker does not consider that the circumstances are exceptional and therefore the claim falls to be refused)

This is not an exhaustive list.

Other human rights claim likely to be clearly unfounded

Article 4(3) of the European Convention on Human Rights (ECHR) excludes military service from the definition of forced labour. A claim based on risk of compulsory military service would in itself be clearly unfounded unless there was another aspect to a claim. Examples of this would be a real risk of discriminatory treatment, or a disproportionate punishment for draft evasion or a real risk of being subject to prison conditions that would amount to treatment contrary to Article 3 of the ECHR.

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When not to certify a clearly unfounded claim: exceptions

This section sets out the exceptions to the policy that where a claim is clearly unfounded it must be certified under section 94 of the Nationality, Immigration and Asylum Act 2002.

Claims that are clearly unfounded should not be certified under section 94:

- if an individual makes both a protection and human rights claim and only one of these claims is clearly unfounded
- except cases where the protection claim is certifiable and the human rights claim can be certified under section 94B see: certification under Section 94B of the Nationality Immigration and Asylum Act 2002
- where extradition is an issue and the process is at the beginning, certification is unlikely to be appropriate
- for more information on extradition see: [guidance on extradition processes](#)

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Miscellaneous issues

This section gives you guidance on issues that may arise when you consider certification in relation to non-compliance with the asylum process, dependents and families of mixed nationality.

Non compliance

Where a claimant from a designated state does not comply with the asylum process, the claim must be considered in the same way as other non-compliance cases. A decision must be made based on the available information. This will normally mean that if the claim is refused it should be certified because there is no information to satisfy the caseworker that the claim is not clearly unfounded. See guidance on Noncompliance.

Dependants

Dependants are provided with the opportunity to make a protection or human rights claim if they have a claim in their own right. Although where more than one family member applies in their own right it is possible to certify a claim by one member and not another, this is not recommended as removal of the certified person may have to await the in-country appeal of other family members.

If the appeal of another family member succeeds, the decision in the certified case must be reviewed in light of the appeal outcome.

If a dependant makes a protection or human rights claim after the principal claimant has been certified, we would not normally remove the principal claimant pending a decision on the dependent's claim. The exception to this would be where family life is not subsisting, for example where a family were living separately before arrival in the UK and have not resumed or maintained their family life whilst in the UK. For further guidance see: Dependants and former dependants.

Families of mixed nationality

Where the principal claimant and partner or child have different countries of origin and one is from a designated state, if the partner or child:

- is claiming solely as a dependant, then their claim should be certified in line with the claim of the principal claimant on a case-by-case basis unless they are entitled to reside in the same designated state as the principal claimant
- claims in their own right, the claim should be assessed against their country of nationality or return

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Certification process

This section explains the process for certifying a protection and/ or human rights claim.

Caseworkers who are not trained on certification under section 94 but consider that they may have a case suitable for certification must refer the case to their senior caseworker (SCW). If the case is suitable for certification the file should be reallocated to a section 94 trained caseworker.

Certification paragraphs

Caseworkers must use the templates available on document generator (Doc Gen) or Atlas to be sure the most up to date version is used.

Protection cases

Asylum caseworkers must consider whether the following are appropriate before certifying a claim:

- a grant of asylum
- humanitarian protection
- family/ private life leave
- discretionary leave
- outright refusal

Human rights cases

Non-criminal deportation cases which relate to human rights claims must first be considered under the Immigration Rules. The list of which applications under the Immigration Rules are human rights claims can be found in rights of appeal.

Criminal deportation cases which relate to human rights claims must consider whether the foreign criminal qualifies under the exceptions to deportation at [paragraph 399 and 399A of the Immigration Rules](#). If they do not qualify under the exceptions, then consideration must be given to whether there are any compelling circumstances that outweigh the public interest in deportation, in line with paragraph 398 of the Immigration Rules (see Criminality: Article 8 ECHR cases), before considering certification.

Further submissions post section 94 certification

All representations received following the service of a section 94 certified decision must be considered in line with the case [ZT\(Kosovo\) \[2009\] UKHL 6](#) which stated that [paragraph 353 of the Immigration Rules](#) must be applied to all further submissions in section 94 cases. For further details see: further submissions.

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Explaining the certification decision

This section gives you guidance on the need for the decision letter to give reasons why a claim is being certified.

The decision letter should make clear the provision under which the claim is certified for example section 94(1) or section 94(3) of the Nationality, Immigration and Asylum Act 2002. However, detailed reasons for certification must be given regardless of whether certification is under section 94(1) or section 94(3).

The case of [FR & KL \(2016\) v SSHD EWCA CIV 605](#) gave the following guidance:

- it is important that separate consideration is given to the decision to refuse the claim and the decision to certify
- there is a two stage reasoning process in play. It is not permissible to have an approach that simply says because the claim is refused the claim is refused as clearly unfounded

When you have decided to refuse the claim, you must then consider whether the claim is clearly unfounded. Where you decide the claim is clearly unfounded you must set out the reasons why you have decided the claim is clearly unfounded.

You should make it clear when considering certification you have not taken into account credibility.

However, if you are certifying on the basis that the claim is not credible you must set out on what basis you are satisfied that nobody could believe the claim.

You should provide reasons why the claim is clearly unfounded. For example, in a protection claim where you consider that the claim is clearly unfounded because there is sufficiency of protection you should make that clear at the point in the letter where you are certifying the claim, referring to the relevant case specific and country information.

The same principle applies to a human rights claim. For example, where family life with a partner is raised you should explain why the claim is clearly unfounded, which can include references to lack of evidence of a genuine relationship or no evidence that family life cannot continue overseas.

However, the fact that a claim does not succeed under the rules is not of itself sufficient reason to certify a claim. In order to certify the claim, the decision maker must be satisfied that the claim is 'clearly unfounded'.

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Certification: recording the decision

Guidance on recording the decision in the Case Information Database (CID) is published in the separate document Recording decisions under section 94 in the Case Information Database.

The Home Office is transitioning its electronic immigration data records to the new Atlas system. During the transition, you may need to record information in one system but not the other, or duplicate entries (or 'double-key') between systems. Where you are entering information on Atlas you should use the process guidance for your specific team, which is available from your senior caseworker. If you have any queries which are not covered by that guidance you should contact your senior caseworker.

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The information in this section has been removed as it is restricted for internal Home Office use only.

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Effect of certifying under section 94

The Nationality and Borders Act 2022 removed the out of country right of appeal for any decisions certified under section 94 from 28 June 2022.

Where a claim was certified before 28 June 2022 there is an out of country right of appeal.

For a protection claim certified as clearly unfounded before 28 June 2022, the appeal is to be treated as if the appellant were not outside the UK (under [section 92\(7\) of the Nationality, Immigration and Asylum Act 2002 as amended](#)). This means that appellants are not prevented from qualifying for recognition as refugees simply because they are not outside their countries of nationality or former habitual residence. It also means that, if the appeal is allowed on protection grounds, the UK will be the state responsible for providing protection.

Treating appellants as if they were in the UK does not mean treating them as if they had remained in the UK ever since their departure. Appellants who wish to raise their experiences abroad since departure are not prevented by section 92(7) from doing so. On the other hand, appellants are not entitled to argue hypothetically on the basis of what would have or might have happened if they had remained in the UK until the date of the hearing.

Where an appeal under section 94 is allowed you must follow the process set out in the Implementing allowed appeals guidance for allowed appeals where the appellant was removed from or required to leave the UK pending the outcome of the appeal.

For further guidance see: Rights of appeal.

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Current list of designated states

This section gives you a list of designated states for the purpose of certification claims.

- Albania
- Bolivia
- Bosnia Herzegovina
- Brazil
- Ecuador
- India
- Macedonia
- Mauritius
- Moldova
- Mongolia
- Montenegro
- Peru
- Serbia
- South Africa
- Ukraine
- Ghana (men)
- Gambia (men)
- Kenya (men)
- Kosovo
- Liberia (men)
- Malawi (men)
- Mali (men)
- Nigeria (men)
- Sierra Leone (men)
- South Korea

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