

## **Certification under paragraphs 9 & 9A of schedule 4 to the Immigration and Asylum Act 1999: multiple claims – updates guidance**

This notice replaces APU notice 03/2001, which gave guidance on the certification of asylum claims when made in conjunction with human rights and/or racial discrimination claims.

2. Since 2 October 2000 it has been possible to certify refused human rights claims on broadly similar grounds to refused asylum claims. And since 2 April 2001 it has also been possible to certify refused racial discrimination claims, although only on the grounds that they are manifestly unfounded. Whilst there have been many human rights claims, there have to date been very few racial discrimination claims.

### **Zenovics judgment (Court of Appeal)**

3. The Court of Appeal has overturned the starred Tribunal determination in *Zenovics*. The Tribunal had held that if an adjudicator upholds the certificate on one claim (in this case an asylum claim), then any other claim (eg a human rights claim) forming part of the one-stop appeal would be prevented from being appealed to the Tribunal.

4. The Court of Appeal concluded that Parliament could not have intended such an outcome, and that the legislation should accordingly be read such that upholding the certificate on a claim prevents an appeal to the Tribunal on that claim only. If there are any other claims forming part of the one-stop appeal it will remain open to the appellant to seek leave to appeal to the Tribunal in respect of those other claims unless they too have had certificates upheld by the adjudicator. We have not appealed the Court of Appeal's judgment.

### **Approach to take on asylum and human rights claims**

5. The policy will change somewhat in light of the Court of Appeal's decision. As before, if both the asylum and human rights claim merit certification they should be so certified, using the most applicable criterion. Each claim should be separately certified even where the basis for certification is the same in both cases - e.g. an applicant who was undocumented without reasonable explanation.

6. The change is that, where one claim merits certification it should be certified irrespective of whether the other claim can be certified. The consequences of certifying one claim only will be limited since, even if the adjudicator upholds that certificate, the appellant will not be prevented from seeking leave to appeal to the Tribunal on the non-certified claim. Nevertheless, the policy is that a claim should be certified where the relevant criteria are met.

## **Human rights claim following a pre 2/10/00 refusal**

**7.** If someone makes a human rights claim it should not be certified under paragraph 9(6)(a)(i), (ii), (iii) or (iv) if those sub-paragraphs are applicable only because the claim could not have been made at an earlier time. For example, if an application has been refused (most likely to be an asylum application, but not necessarily) and/or appealed before 2 October 2000 then there will have been no formal opportunity to lodge a human rights claim. Therefore, any ensuing human rights claim should not be certified under paragraph 9(6), providing such a claim is made at the earliest formal opportunity.

## **Racial discrimination claims**

**8.** If a racial discrimination claim is made it will normally fall to be certified as manifestly unfounded if the alleged discrimination was permitted by legislation or by a Ministerial authorisation or where the allegation did not disclose any discriminatory treatment. Where a racial discrimination claim is made in conjunction with an asylum and/or human rights claim the approach set out in paragraph 6 should be applied - namely, the racial discrimination claim should be certified even where the asylum and/or human rights claim does not merit certification.

## **Other claims ("mixed claims")**

**9.** The Court of Appeal judgment has implications for an application involving one or more claims where certification is possible (i.e. asylum, human rights or racial discrimination) and also a claim on another basis (e.g. extension of stay as a student). In such a case, the claim or claims which can be certified should be certified where appropriate. But, contrary of what paragraph 3.3 of the Asylum Policy Instruction on Certification under Schedule 4 (Chapter 5, section 2) says, such a certificate, even if upheld by the adjudicator, would not prevent leave to appeal to the Tribunal on the other element(s) of the application.

## **Claims made after an initial decision**

**10.** It may be that a further claim (e.g. a human rights claim) is advanced in the (additional) grounds of appeal, after the initial claim (e.g. an asylum claim) has been refused. In such circumstances the caseworker in ASS will need to consider whether the further claim put forward in the appeal falls to be refused and, if so, whether it should also be certified. If the further claim does merit certification, it should be certified, even if the refused initial claim was not certified. It is important that the appellant be notified of this certification and the basis for it in the supplementary reasons for refusal letter.

**11.** The same principle applies if a racial discrimination claim is made in the (additional) grounds of appeal.

## **Transitional arrangements**

**12.** No special transitional arrangements should arise from this notice. Applications determined from the date of this notice should be certified in accordance with the policy it sets out. There will be some applications involving both an asylum and a human rights claim which have been refused and neither claim has been certified, even though one of the claims would have been certified had the policy set out in this notice been in force at the time of the decision. Those cases are now water under the bridge as far as certification is concerned, and no attempt should be made to certify them between the refusal and appeal stage.

This note should be read alongside the Asylum Policy Instruction on Certification under Schedule 4 (Chapter 5, section 2). That API will be updated in due course to reflect, amongst other things, the Court of Appeal's judgment in *Zenovics*.

Any enquiries about this note should be referred, via a senior caseworker, to APU.

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