Asylum Policy Instruction
EU/EEA Asylum Claims

Version 3.0

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About this guidance

This guidance tells you about considering asylum claims from nationals of the European Union (EU), the European Economic Area (EEA) and nationals of Switzerland.

Contacts

If you have any questions about the guidance and your line manager or senior caseworker cannot help you, or you think that this guidance has factual errors then you can email the Asylum 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 at Guidance – making changes.

Clearance

This version of the guidance is:

- **version 3.0**
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- The information on this page has been removed as it is restricted for internal Home Office use.

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- approved on **18 November 2015**

Changes from last version of this guidance

- new correspondence template introduced
- updated to cover the changes introduced by the Immigration Act 2014
- updated to provide guidance on implementing the new Immigration Rules that make asylum claims from EU nationals inadmissible unless exceptional circumstances apply

Section 1: Introduction

1.1 Purpose of instruction

This guidance explains how the Home Office will process asylum claims, including further submissions, lodged by nationals of the European Union (EU), the European Economic Area (EEA), and Switzerland.

This instruction provides specific guidance on:

- the countries that make up both the EU and the EEA
- treating asylum claims from EU nationals as inadmissible on the basis that EU Member States are considered to be safe countries, and the procedure to follow when exceptional circumstances are raised
- considering claims from EEA nationals who are not part of the EU and Swiss nationals, on the presumption that they are clearly unfounded

Caseworkers should refer to guidance on Asylum Interviews, Assessing credibility and refugee status and Certification of protection and Human Rights claims where an asylum claim falls for substantive consideration.

This updates and replaces the previous instruction, 'EU/EEA asylum claims version 2'.

1.2 Background

The UK has a proud history of providing protection to those who need it, in accordance with our international obligations under the Refugee Convention and European Convention on Human Rights (ECHR). However, considering asylum claims made by EU nationals goes beyond our obligations under EU law, which requires Member States to treat such claims as inadmissible unless there are exceptional circumstances. This is because EU Member States are deemed to be safe countries and as such asylum claims from EU nationals are presumed to be clearly unfounded.

New Immigration Rules were introduced on 19 November 2015 to allow claims from EU nationals to be treated as inadmissible whilst providing a mechanism to consider claims where exceptional circumstances are raised. When a claim is treated as inadmissible, in accordance with the rules, it will not be considered at all. This upholds the integrity and fairness of the asylum system and focuses resources on asylum claims from those in genuine need of protection.

Where it is accepted that there are exceptional circumstances as set out in Paragraph 326F of the Immigration Rules, the case must be overseen by decision makers accredited to make Non-Suspensive Appeal (NSA) decisions.

1.3 Policy intention

The policy objective is to maintain a fair and efficient asylum system to ensure that protection is offered without unnecessary delay to those who genuinely need it, whilst taking appropriate steps to deter abusive claims designed to delay removal by:

- treating asylum claims from EU nationals as inadmissible, unless there are exceptional circumstances, in accordance with our obligations under the Protocol on Asylum for Nationals of Member States of the EU
- considering claims from EEA and Swiss nationals who are not part of the EU, within the context of a presumption that such claims are clearly unfounded, whilst ensuring a process exists to rebut this assumption
- informing EU/EEA nationals of their free movement rights where they are not subject to removal action; and other available options to apply for leave to remain on non-protection based human rights grounds

1.4 Application in respect of children

Section 55 of the Borders, Citizenship and Immigration Act 2009 requires the Home Secretary to ensure that immigration, asylum and nationality functions are discharged in a way that safeguards and promotes the welfare of children in the UK. Caseworkers must have regard to best interest when processing claims from EU/EEA and Swiss nationals, and when dealing with parents and their children must see the family both as a unit and as individuals.

Asylum claims from EU nationals involving children, whether claiming in their own right or as dependants on their parents, must be treated as inadmissible unless the exceptional circumstances criteria are met. EU countries are deemed to be safe countries for children as well. A child's best interests are not a factor in assessing whether a fear of persecution is well founded and in any event EU countries are deemed to be safe countries. It is not in a child's best interests to pursue a claim through the full asylum process if that claim is unfounded and bound to fail because they have no well-founded fear in their country of origin.

It is very unlikely that a decision to treat an asylum claim as inadmissible or as unfounded would adversely impact on a child where an EU/EEA national is either exercising treaty rights or is here with valid leave under the Immigration Rules, because there would be no requirement for the child, or their parents, to leave the UK. However, where an EU/EEA national is subject to deportation action or they are not exercising treaty rights and removal is being considered, this will impact on the child. As such, the best interests of the child must be considered in the context of any human rights claims. Best interests can be outweighed by the strong public interest in deporting those convicted of serious crimes, particularly given that the effect of that decision would not require the child to leave the EU.

Caseworkers should refer to the Criminality Guidance for Article 8 ECHR cases and the IDI Family Migration: Appendix FM Section 1.0b contains a section on best interests of a child. The Derivative Rights of Residence Guidance contains guidance on Zambrano.

All claims made by children, including those from EU/EEA nationals that are considered substantively, must be considered by caseworkers who have received specialist training on how to deal with asylum claims made by children.

For further information on the key principles to take into account, see: 'Every child matters: statutory guidance'.

Section 2: Relevant Legislation

2.1 The Treaty of Amsterdam

The Protocol on Asylum for Nationals of Members States, often referred to as the 'Spanish Protocol', is annexed to the Treaty of Amsterdam establishing the European Community and applies to EU Member States considering asylum claims from nationals of other Member States.

The Protocol considers that the level of protection afforded to an individual's fundamental rights and freedoms by Member States means that they should be regarded as safe countries of origin. The procedures set out in the Protocol for handling asylum claims from EU nationals (including dual nationals) must be followed. Although there are specific exceptions to cover deterioration in conditions within a Member State, normally the state considering the claim may either declare the claim inadmissible, or consider it in the context of a presumption that it is clearly unfounded.

Under the previous policy asylum claims were considered substantively because there was no general procedure in which a claim could be declared inadmissible other than in the application of safe third country provisions. However, new Immigration Rules were introduced on 19 November 2015 to allow claims from EU nationals to be treated as inadmissible unless there are exceptional circumstances as set out in Paragraph 326F of the Immigration Rules. The terms of the Protocol require Member States to inform the EU Council of the fact that they have received and are considering such a claim substantively.

2.2 European Directives

The EU Procedures, Reception Conditions and Qualification Directives are restricted in their application to third country nationals and therefore do not apply to EU nationals. This is made clear at **Article 2(c)** of the Procedures Directive, **Article 2(b)** of the Reception Conditions Directive and **Article 2(c**) of the Qualification Directive.

That means EU nationals must rely directly on the Refugee Convention itself. Humanitarian Protection (HP) is not in the Refugee Convention and is a concept created by the Qualification Directive. As such there is no international obligation to consider HP for EU nationals. In addition, as the Procedures Directive does not apply to EU nationals, there is no international obligation to provide an interview.

2.3 Domestic Legislation

The Immigration (European Economic Area) Regulations 2006 apply and interpret the UK's obligations under the Free Movement of Persons Directive 2004/38/EC into domestic law. Switzerland is not part of the EEA, but Swiss nationals and their family members have the same free movement rights as EEA nationals. The regulations apply to all EEA and Swiss nationals. The definition of 'EEA state' in the Regulations does not include the UK.

The Accession of Croatia (Immigration and Worker Registration) Regulations 2013 set out provisions in relation to entitlement of Croatian nationals to reside and work in the UK.

Deportation of EU/EEA nationals and their family members must be considered under the Immigration (European Economic Area) Regulations 2006. All EU/EEA Foreign National Offenders (FNOs) given one or more custodial sentences must be referred for consideration of deportation. There is no longer a requirement for an EU/EEA FNO in receipt of a custodial sentence to meet a particular threshold before being considered for deportation. Those with multiple non-custodial sentences may also be referred. Guidance for deporting EU/EEA nationals can be found in the EEA FNO cases guidance. Further information is available in Guidance on Deporting Foreign Nationals.

2.4 The Immigration Rules

Paragraphs 326A to 326F of the Immigration Rules set out when an EU asylum claim shall be declared inadmissible and when exceptional circumstances may apply in an EU asylum claim.

Paragraph 339NA of the Immigration Rules sets out the circumstances under which a substantive interview may be omitted. The specific provisions relevant to this instruction include:

> (viii) the applicant is an EU national whose claim the Secretary of State has nevertheless decided to consider substantively in accordance with paragraph 326F above.

Paragraph 339M of the Immigration Rules sets out the circumstances under which it may be appropriate to refuse an asylum claim and any human rights issues raised as part of that claim including: failing without reasonable explanation, to make a prompt and full disclosure of material facts, either orally or in writing, or otherwise to assist the Secretary of State in establishing the facts of the case. This includes, for example, failure to report to a designated place to be fingerprinted, failure to complete an asylum questionnaire or failure to comply with a requirement to report to an immigration officer for examination.

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Section 3: European cases

Caseworkers may see claims from the following types of European cases:

- claims from nationals of European Union (EU) states
- claims from nationals of European Economic Area (EEA) states that are not part of the EU
- claims from non EU/EEA nationals **resident** in an EU or EEA state

3.1 The European Union

The member states of the EU are:

Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Irish Republic, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, United Kingdom.

3.2 The Accession States

Accession states are Member States that joined the EU later than the original Member States. The accession states and their dates of accession are:

- Cyprus; Czech Republic; Estonia; Hungary; Latvia; Lithuania; Malta; Poland; Slovakia and Slovenia (**1 May 2004**)
- Romania and Bulgaria (**1 January 2007**)
- Croatia (**1 July 2013**)

Any asylum claims from EU nationals (including Accession States) must be declared inadmissible unless exceptional circumstances apply.

3.3 The European Economic Area (EEA)

The EEA is made up of the member states of the EU, together with Liechtenstein, Norway and Iceland. Switzerland is neither an EU nor EEA member but Swiss nationals have the same rights to live and work in the UK as other EEA nationals. Whilst asylum claims from nationals of Liechtenstein, Norway, Iceland and Switzerland cannot be treated as inadmissible, they must be considered on the presumption that they are clearly unfounded if it is not appropriate to treat them as withdrawn.

3.4 Non EU/EEA nationals resident in EU/EEA states

If a claimant applies for asylum on the basis of persecution in an EU/EEA country but is **not** a national of that country (for example, an ethnic Russian entitled to reside in Latvia but not a Latvian national, or a Syrian national with residency rights in Greece), the claim cannot be treated as inadmissible.

However, such claims must be considered on the presumption that they are clearly unfounded in accordance with Non-Suspensive Appeal (NSA) certification procedures under section 94 of the Nationality, Immigration and Asylum Act 2002. See Asylum Instruction 'Certification under section 94 of the NIA Act 2002' for further guidance.

3.5 Qualified persons

EU/EEA and Swiss nationals have free movement rights under EU law and as such may be legally entitled to reside in the UK. A qualified person under the EEA Regulations 2006 means a person who is an EU, EEA or Swiss national and in the UK as either:

- a job seeker
- a worker
- a self-employed person
- a self-sufficient person
- a student

Croatian nationals who wish to take employment will normally need permission before they start work and may need an accession worker registration certificate.

Senior caseworkers can contact the European operational policy team for further advice.

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Section 4: Processing claims

Most EU/EEA nationals will already be aware of their free movement rights. However, caseworkers must ensure that when an asylum claim or further submission is made, they confirm that the claimant is aware of these rights unless they are liable to removal from the UK.

4.1 Claims made before accession

Nationals from an EU accession state may not be aware of their free movement rights if they claimed before accession. See section 3 for relevant accession dates. They should be advised of these rights and offered the opportunity to withdraw their asylum or human rights claim or further submission where that claim was made before 19 November 2015 and is already part way through the asylum process. There should be very few, if any, outstanding claims made before accession.

4.2 Claims processed before 19 November 2015

Asylum claims from EU nationals submitted before 19 November 2015 that have already been admitted into the full asylum process should not be declared inadmissible. Such claims should be considered in accordance with guidance in section 6. For example, if the claim is not withdrawn, it should be considered on the presumption that it is clearly unfounded. This is because those who claimed before the new rules came into force, whose claim has already been accepted for substantive consideration have a legitimate expectation that their claim will be considered through the full asylum process.

4.3 Claims processed on or after 19 November 2015

Asylum claims from EU nationals processed on or after 19 November 2015 must be declared inadmissible unless exceptional circumstances apply. See section 5 for guidance.

Claims made before 19 November 2015 may be treated as inadmissible providing that the claimant has not already been invited to attend a substantive interview and has not been provided with any other correspondence specific to the circumstances of the individual claim that could give rise to a legitimate expectation that the claim would be considered substantively. Where an asylum claim is declared inadmissible, the standard letter ASL 5052 contains a section on free movement rights.

4.4 Claims from nationals of Liechtenstein, Norway, Iceland and Switzerland

Liechtenstein, Norway and Iceland are part of the EEA but not part of the EU. As such, claims from those nationals, or from Swiss nationals, cannot be declared inadmissible but must be admitted to the full asylum process and considered on the basis that they are clearly unfounded, if the claim is not withdrawn.

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Section 5: Declaring asylum claims inadmissible

All asylum claims from EU nationals lodged on or after 19 November 2015 must be treated as inadmissible unless there are exceptional circumstances. The onus is on the claimant to provide written reasons why their claim should be considered exceptionally. Paragraph 326F of the Immigration Rules sets out when exceptional circumstances apply. Where a claim meets such a criteria, it will not be appropriate to treat the case as inadmissible and must instead be admitted to the asylum process for substantive consideration. Such cases are expected to be very rare as EU countries are deemed to be safe countries.

This section sets out the procedure to follow when treating an asylum claim as inadmissible.

5.1 At the point of claim: capture basic details

A full screening interview is not required. The claimant's basic details (name, address, nationality, date of birth) must be captured to establish a Home Office record on the Casework Information Database (CID). They must be fingerprinted to tie them to an identity, and UKVI Operating Mandate checks and the trafficking and criminality sections of the screening interview must be completed.

5.2 Declare the claim inadmissible when it is made

The claim should be declared inadmissible as soon as it is made. Where no reasons are provided that set out exceptional circumstances at the time the claim is made, it must be declared inadmissible using the standard template letter ASL 5052 and including option 1.

If a written statement is received at the time the claim is made or after the claim has been declared inadmissible, caseworkers should review the information provided to decide whether there are exceptional circumstances. If the information does not satisfy the exceptional circumstances criteria set out in paragraph 326F, the caseworker must issue the standard template letter ASL 5052 and include option 2 to show that the evidence has been reviewed and the inadmissibility decision maintained because it is not accepted that there are any exceptional circumstances.

Where a claim is treated as inadmissible there is no requirement to provide detailed reasons for the decision. However, brief reasons justifying the decision should be recorded on the Home Office file.

5.2.1 Vulnerable cases

Any vulnerable cases should still be referred to the appropriate safeguarding lead in order to safely determine the correct way to deliver the decision to treat the claim as inadmissible.

5.3 Human rights

Where an asylum claim is declared inadmissible, caseworkers do not need to consider any Article 8 elements that are raised as part of the claim. This is because paragraph 326B does not apply as the asylum claim has not been admitted for consideration, a valid human rights application has not been made and there is consequently no valid human rights claim to be decided. It is open to individuals to make a valid human rights application for leave to remain unless the exemptions in Gen 1.9 of Appendix FM apply.

A valid application should be made using form FLR(FP), FLR(O) or other specified form for the purposes for which leave is sought. Such applications will be considered in accordance with appropriate policy guidance, including, for example, family (Appendix FM) and private life (276ADE(1)) of the Immigration Rules and on the basis of Article 8 exceptional circumstances and other compassionate and compelling factors or Discretionary Leave policy, in line with our obligations under the ECHR.

5.4 Victims of Modern Slavery/Trafficking

EU nationals must still be referred to the National Referral Mechanism where there are indicators that the individual has been a victim of modern slavery or trafficking. The asylum claim must still be declared inadmissible because victims could seek redress from the authorities in their country of origin, they may nevertheless qualify for leave to remain in the UK under the Discretionary Leave policy. Caseworkers can refer to guidance on Modern Slavery and the Discretionary Leave instruction for further information.

5.5 Exceptional circumstances

EU Member States are required to abide by the ECHR and under the Spanish Protocol it is considered that the level of protection afforded to individuals' fundamental rights and freedoms in EU Member States means that they are deemed to be safe countries of origin. As such, there is no risk of persecution for individuals entitled to reside in EU countries that would give rise to a need for international protection. It is expected that there will be very few claims that are not declared inadmissible and are instead admitted to the asylum process for full consideration and even fewer, if any, who qualify for international protection based leave in the UK.

An asylum claim from an EU national will only be admissible if the claimant sets out exceptional circumstances which require the claim to be fully considered in accordance with paragraph 326F. Such circumstances may include:

- the member state of which the claimant is a national has derogated from the ECHR in accordance with Article 15 of that Convention – Article 15 allows states to derogate from certain rights guaranteed by the Convention in time of war or other public emergency threatening the life of the nation

- the procedure in Article 7(1) of the Treaty on European Union (TEU) has been initiated, and the Council or, where appropriate, the European Council, has yet to make a decision as required in respect of the member state

- the Council has adopted a decision in accordance with Article 7(1) of the TEU in respect of the member state, or the European Council has adopted a decision in accordance with Article 7(2) of that Treaty in respect of the member state

The EU is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including those belonging to minorities. This is set out in Article 2 of the TEU. There is a framework within the EU to address threats to the rule of law, which provides for the European Commission to discuss such issues with the EU Member State concerned to find a solution. If no solution is found, Article 7 of the TEU is the last resort to resolve a crisis and ensure compliance with EU values, including the ECHR.

The purpose of Article 7 of the TEU is to ensure that all EU countries respect the common values set out in Article 2 of the TEU. It may be used where there is a risk of a serious breach of those values and the sanctioning mechanism of Article 7(2) where there is a serious and persistent breach by a Member State. This allows the Council to suspend certain rights deriving from membership of the EU where a Member State fails to address the concerns. The European Commission has so far addressed such problems by exerting political pressure, as well as by launching infringement proceedings but has so far never had to apply Article 7. EU countries respect the rule of law, are bound by and abide by their obligations under the ECHR and provide sufficiency of protection, and redress where it is needed, to it citizens. There is further redress to the European Court of Human Rights.

Senior caseworkers can contact the Asylum Policy team if they are unsure whether the issues raised are sufficiently exceptional to mean that the case should be admitted for full consideration.

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Section 6: Claims admitted to the asylum process for consideration

6.1 Presume unfounded

On the rare occasion where there are exceptional circumstances to justify a claim being considered substantively or where an asylum claim is made by a national of Liechtenstein, Norway, Iceland or Switzerland, the case must be overseen by a non-suspensive appeal (NSA) caseworker. Such claims must be considered on the presumption that it is clearly unfounded on the basis that EU and EEA states are deemed to be safe countries.

Claims must be considered in accordance with relevant published guidance on asylum and human rights cases, in particular Asylum Interviews, Assessing credibility and refugee status, Certification under section 94 of the NIA Act 2002, Gender issues in the asylum claim, Sexual orientation in the asylum claim, [IDI Family Migration: Appendix FM Section 1.0b], Discretionary Leave and Further Submissions.

6.2 Decide case on written evidence provided

Where possible, caseworkers should make a decision based on the written evidence provided. Only where it is not possible to make a decision on the asylum or human rights claim or further submissions should caseworkers consider inviting the claimant to attend a substantive asylum interview. Paragraph 339NA (viii) states that an interview may be omitted if the claimant is an EU national whose claim is being considered substantively in light of exceptional circumstances. An interview may also be omitted in other circumstances, for example, where it is considered that an asylum claim has been made to simply to delay or frustrate removal.

6.3 Claimants who fail to attend interview

Where an EU national is invited to attend an interview but fails to do so, without prior notification, caseworkers must contact the legal representative (or the claimant if they are not represented), to establish why they did not attend.

If the representative indicates that non-attendance was due to medical or other reasons, the caseworker must consider whether it is appropriate and necessary to reschedule an interview or whether a decision can be made on the evidence already available on file. It may be appropriate to request further written evidence from the representative or claimant if this is considered necessary. See the 'Asylum Interviews' instruction for further guidance on acceptable reasons to rebook interviews. If it is not appropriate to rebook the interview, a decision must be made based on all the information available.

6.4 Non-compliance

[Paragraph 339M] of the Immigration Rules permits the rejection of an asylum or human rights claim without further consideration in certain circumstances. Where an EU/EEA claimant has failed, without reasonable explanation, to make

a prompt and full disclosure of the facts of the case or assisted in establishing the facts of the case, the claim can be refused on non-compliance grounds.

It is unlikely to be necessary to refuse an EU national on non-compliance grounds. If they fail to establish the facts of their case it is unlikely that they will be able to demonstrate exceptional circumstances to justify consideration and as such the claim ought to be declared inadmissible at the point of claim.

However, if the case has already been admitted to the full asylum process and the individual later fails to provide further evidence on request, either by failing to attend an interview or by refusing to provide additional written evidence, it may be appropriate to refuse on non-compliance grounds, but only if the claim cannot be treated as withdrawn under paragraph 333C. See the asylum instruction on Non-Compliance for further details.

6.5 Refusing claims from EU/EEA nationals after substantive consideration

Where it is decided to refuse the claim, consideration **must** be given as to whether the claim should be certified under section 94 of the Nationality, Immigration and Asylum Act 2002. Caseworkers must refer to the published guidance on Certification under section 94. The presumption of clearly unfounded under the Spanish Protocol is the starting point for considering the asylum claim. If that presumption is rebutted, so that the claim falls to be refused but the caseworker no longer considers the claim to be clearly unfounded, then it should not be certified.

Even where it is not considered appropriate to certify the human rights part of the claim, caseworkers must consider whether certification of the asylum claim on the basis that the asylum claim is clearly unfounded is appropriate. Refusal on non-compliance grounds under paragraph 339M of the Immigration Rules may also be certified as 'clearly unfounded'.

Caseworkers refusing asylum claims from EU/EEA nationals must use the standard ASL 0015 letter template.

6.5.1 Considering human rights as part of an asylum claim

Where an EU/EEA national is a **qualified person** under the EEA Regulations 2006, and has the right to reside in the UK, refusal of asylum **must not** be followed by consideration of a human rights claim where they are not liable for removal. It is not necessary to consider whether removal would breach an individual's human rights if they are not liable for removal, though a valid application for leave to remain would still be considered.

Where the EU/EEA national is **not a qualified person** under the EEA Regulations 2006, or is liable for removal on grounds of public policy, public security or public health under regulation 21, or on grounds of abuse of rights or fraud under regulation 21B, and as such has no right to reside, consideration of the human rights claim must follow the refusal of asylum, in accordance with paragraph 400 of the Immigration Rules. This is because they will be removed unless doing so would be a breach of their human rights under the ECHR.

6.5.2 Deportation cases

In deportation cases, where a decision is made to consider a case substantively and then refuse, the claimant's right under Article 8 of the ECHR must be considered as they will no longer be able to pursue their free movement rights. Clearly unfounded refusals should be certified under section 94 with an out-of-country appeal right or section 96 with no right of appeal where appropriate. See policy guidance on certification for further details. Caseworkers must refer any case where there is an intention to remove to a senior caseworker before making a decision on the human rights claim.

6.5.3 Extradition cases

In extradition cases, where a decision is made to consider a claim substantively and then refuse, the claimant's right under Article 8 of the ECHR must be considered as they will no longer be able to pursue their free movement rights. However, Article 8 (and other ECHR) rights should have already been considered by the Magistrates' Court dealing with the extradition proceedings (extradition courts are required to determine whether extradition is compatible with a person's ECHR rights). Any judgment of the extradition court should be the starting point for considering any human rights issues, noting the strong public interest in extraditing foreign criminals. There is no need to provide further detailed reasons where such issues were fully considered by the Magistrates' Court but any new evidence needs to be addressed.

Certification in clearly unfounded cases is not appropriate when the claimant is subject to extradition proceedings. Under section 94(6A) of the Nationality, Immigration and Asylum Act 2002, the duty to certify is removed where someone is subject to extradition proceedings. This is because a person with an outstanding asylum claim, not treated as inadmissible, cannot be extradited until that claim has been finally determined (see sections 39 and 121 of the Extradition Act 2003). This means that if the refusal does generate a right of appeal, it must be in-country.

There is an exception to the section 39 restriction in European Arrest Warrant (EAW) cases, where section 40 can be applied so as to allow extradition even before the asylum claim is finally determined, in certain limited circumstances. However this only assists where the person is **not** a national or citizen of the country to which extradition has been ordered.

This only applies to cases that are being fully considered in line with the exceptional circumstances criteria set out in paragraph 326F. Where a claim is declared inadmissible there is no outstanding claim and extradition can proceed. However, any human rights issues raised will need to be addressed. Again, the starting point should be any judgment of the extradition court as that court will already have determined whether extradition is compatible with the individual's ECHR rights.

6.5.4 Priority cases

Any case where deportation or extradition action is being taken or where the claimant is not a qualified person under the EEA Regulations 2006 should be given high priority and must always be referred to a senior caseworker.

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6.6 Granting asylum to EU/EEA nationals

It will not normally be appropriate to grant asylum to EU/EEA nationals given that EU/EEA countries are deemed to be safe countries which are required to abide by the ECHR. There is, in general, no risk of persecution in EU/EEA countries such that it would give rise to a need for international protection.

However, if the circumstances of an individual case justify a grant of asylum this must be processed in line with published guidance on Assessing Credibility and refugee status and the Implementing Substantive Asylum Decisions instruction.

If the claimant qualifies for discretionary leave (DL) or leave on the basis of family or private life, or other compassionate or compelling grounds, leave should be granted in line with current policy under or outside the Rules.

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6.7 Asylum support for EU/EEA nationals

Schedule 3 of the Nationality and Asylum Act 2002 prevents National Asylum Support Service or local authorities from providing support under the Immigration and Asylum Act 1999 to citizens of EU/EEA states even where they have an outstanding asylum claim.

Caseworkers can find further information on asylum support for EU/EEA nationals in Asylum Support Policy Bulletin 76 (Asylum support from nationals of an EEA state or from persons who have refugee status abroad).

Section 7: Further leave applications

7.1 Considering applications for further leave

EU/EEA nationals or their family members, who have the right to reside in the UK under EU law, do not need permission under the Immigration Rules to enter or remain. Therefore, EU/EEA nationals generally do not apply for, or require leave to enter or remain in the UK. However, qualified persons may choose to apply for leave and such applications should be processed in accordance with the relevant policy under which they apply.

Any applications for further leave from any EU/EEA nationals following a grant of limited leave to enter or remain must be processed in accordance with the relevant policy under which they apply. Human rights issues raised through the appropriate application process must be considered in accordance with our obligations under the ECHR.

7.2 Refusing further leave applications

Caseworkers should implement the decision using the standard reasons for refusal letters and instructional minute sheet.

7.3 Deportation, extradition or removal and further leave applications

Cases where there is a deportation or extradition action, or where there is an intention to remove an EU national, should be given high priority and must be referred to a senior caseworker before a decision is made. The further leave application must be processed by following the relevant policy under which the application was made.

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Section 8: Appeal Rights

8.1 Rights of Appeal – EU/EEA Nationals

There is no right of appeal against a decision to treat a claim from an EU national as inadmissible though the decision may be challenged by way of Judicial Review.

EU/EEA nationals whose claims are fully considered and refused will have a right of appeal under section 82 of the Nationality, Immigration and Asylum Act 2002, but where appropriate should be certified as clearly unfounded so any appeal must be brought from outside the UK. Cases may also be certified under section 96 where it is appropriate to do so. Caseworkers should refer to the published guidance on certification under Section 94 and 96.

8.2 Non EU/EEA family members

Where non-EU/EEA family members of an EEA national apply for asylum the claim cannot be treated as inadmissible. The claim should be considered substantively and those refused will have a right of appeal under section 82 of the Nationality, Immigration and Asylum Act 2002 (as amended), but where appropriate should be considered for certification under section 94 or 96.

Further information on non-EEA national family members, for example spouses and children, can be found in the guidance 'Direct Family Members of EEA Nationals'. Further information on non-EEA national extended family members, for example unmarried partners and more distant relatives, can be found in the guidance 'Extended Family Members of EEA Nationals'.

Caseworkers must refer any case where there are doubts on whether the EEA Regulations apply to a senior caseworker, who can contact the European Operational policy team for further advice if necessary.

Section 9: Change Record

Version	Author(s)	Date	Change References
1.0	GT	19/02/07	New web style implemented
2.0	Asylum Policy	16/05/14	Reviewed and updated instruction. Merged 'Claims from EU Nationals', 'Asylum claims made by EU Nationals' and 'Applications from EEA / EU'
3.0	Asylum Policy	09/12/15	Updated instruction in light of Immigration Act 2014 changes and new Immigration Rules that make EU asylum claims inadmissible unless exceptional circumstances apply.