Home Office

Asylum and human rights policy instruction

Further submissions

Version 9.0

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Contents

About this guidance

This guidance tells you about dealing with asylum or human rights based further submissions, including those made by way of a valid application under the Immigration Rules.

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 Asylum Policy.

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 Guidance – making changes.

Clearance

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

- version 9.0
- published for Home Office staff on 19 February 2016

Official – sensitive: start of section

This information has been removed as it is restricted for internal Home Office use.

Official – sensitive: end of section

- approved on 17 February 2016

Changes from last version of this guidance

- updated to reflect Immigration Act 2014 changes since v8.0
- clarification on how paragraph 353 applies to human rights only cases, including valid applications made under the Immigration Rules after an earlier asylum or human rights claim has been refused
- additional circumstances in which paragraph 353 does not apply to further asylum or human rights claims.

Contents

Section 1: introduction

1.1 Purpose of instruction

This guidance explains the policy, process and procedure which must be followed when considering further submissions following the refusal of an asylum **or** human rights claim, or where an asylum claim has been withdrawn or treated as withdrawn under paragraph 333C of the Immigration Rules. It applies to all staff dealing with asylum or human rights based further submissions and covers:

- the process for making asylum and human rights based further submissions
- circumstances in which those lodging further submissions may be detained under immigration detention powers
- considering evidence provided as further submissions
- how to apply paragraph 353 of the Immigration Rules

This instruction must be read in conjunction with the policy instructions, Asylum Interviews, Assessing credibility and refugee status, Gender issues in the asylum claim, Exclusion, Appeals Guidance, Certification (Asylum and Human Rights claims), Late claims: certification under section 96 of the Nationality, Immigration and Asylum Act 2002 and IDI Chapter 8: Appendix FM: 1.0b Family and private life – 10 year route.

This policy does not apply to individuals included on asylum claims as dependants who later claim asylum in their own right. See the Dependants and former dependants instruction for guidance on handling those cases.

1.2 Background

Those who make an asylum or human rights claim are expected to disclose, at the earliest opportunity, all relevant information they can provide to support their claim. Throughout the immigration process, claimants are provided with every opportunity to disclose all relevant evidence about why they need protection or why they should be allowed to remain in the UK on the basis of their human rights. For asylum cases, this is primarily achieved during their substantive interview before a decision is made, to ensure that claims can be fully considered and protection granted to those who genuinely need it. For human rights cases, the appropriate application form, based on the reason why a person wants to remain in the UK, allows claimants the opportunity to provide all the evidence relevant to their claim.

However, further evidence may be submitted by a failed asylum seeker or a migrant who has had their human rights claim refused. Caseworkers must usually consider such further submissions, which may or may not be different from information previously considered, by applying paragraph 353 of the Immigration Rules.

1.3 Policy intention

The policy objective when dealing with further submissions is to maintain a firm but fair and efficient immigration system that grants protection and/or leave to those who

need it, or qualify for it, but tackles abuse and protects public funds by quickly rejecting unfounded or repeat claims. This is achieved by:

- requiring protection based further submissions from failed asylum seekers to be made in person to ensure they maintain contact with the Home Office and to minimise the risk of fraud by checking their identity
- requiring further submissions on non-protection human rights grounds to be made by means of a valid application
- quickly considering whether the new evidence changes the original decision to refuse, to ensure we grant protection and/or leave to remain to those who qualify for it
- dealing quickly with unfounded claims and using immigration detention to ensure those who do not need protection and have no other right to be in the UK leave voluntarily or have their removal enforced quickly (and in the meantime cannot access financial support).

1.4 The best interests of the child

Caseworkers dealing with any immigration case involving children, including considering further submissions under paragraph 353, must consider the best interests of any child who will be affected by the decision. This is in accordance with the statutory duty on the Home Office under section 55 of the Borders, Citizenship and Immigration Act 2009.

Provision is made in the asylum process for the essential safeguarding and well-being needs of children, whether they are claiming asylum in their own right or included as dependents on their parents' asylum claim. Such needs are met, where necessary, through appropriate support and accommodation arrangements.

Failed asylum seekers who lodge further submissions, and who can demonstrate that they would otherwise be destitute, can make an application for section 4 support. Asylum seekers who have at least one child under 18 will normally continue to be entitled to section 95 support after their asylum claim is finally determined, until they leave the UK. Therefore if they proceed to file further submissions, they will normally be supported under section 95 while those further submissions are considered. Any decision on further submissions must take into account the section 55 duty.

Whilst claimants are required to make an appointment to submit protection based further submissions in person in Liverpool, they are not required to bring children with them. It is therefore unlikely that the requirement to lodge further submission in person would adversely impact on a child to such an extent that it would override the public interest in reducing the risk of fraud and maintaining effective immigration control. However, caseworkers should consider any exceptional arguments as to why someone cannot travel to Liverpool to attend in person due to the interests of children, for example:

- the claimant cannot make suitable childcare arrangements
- travelling to Liverpool would force them to take the child out of school

Any decision to allow a postal claim must be approved by a senior caseworker.

Unaccompanied children under the age of 18 who wish to lodge further submissions can do so locally or by post and are not required to travel to Liverpool. However, former unaccompanied asylum seeking children aged 18 or over who wish to lodge further submissions on protection grounds must do so in person in Liverpool. If they want to stay in the UK for other reasons, they are entitled to make a valid postal application on the appropriate route.

In non-asylum cases, applications can be submitted in person or by post and the decision making process takes into account the section 55 duty to safeguard and promote the welfare of children in carrying out immigration functions.

For further information on the key principles to take into account, see: Section 55 Children's Duty Guidance.

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Section 2: relevant legislation

2.1 The Refugee Convention

The 1951 Refugee Convention provides the framework for international refugee protection. It has since been supplemented in the European Union (EU) and other regions by a subsidiary protection regime and the progressive development of international human rights law.

2.2 European legislation

The European Convention on Human Rights (ECHR) provides the framework for ensuring the rights and fundamental freedoms of individuals in European signatory states.

The UK is signed up to and bound by the European Council Qualification Directive 2004/83/EC and Procedures Directive 2005/85/EC. These set out the criteria which EU Member States must apply when considering applications for refugee and subsidiary protection status, and the minimum standards on procedures for granting and withdrawing that status. Article 32 of the Procedures Directive specifically provides procedures and criteria for considering subsequent applications. These provisions are reflected in Part 12 of the Immigration Rules.

2.3 Domestic legislation

The Human Rights Act 1998 allows cases concerning the rights set out in the ECHR to be brought in the UK courts. This applies to all decisions made on or after 2 October 2000 and means all decisions must take account of rights and freedoms guaranteed under the ECHR. Further information can be found in the guidance on considering human rights claims.

Section 82 of the Nationality, Immigration and Asylum Act 2002 (the '2002' Act) (as amended by the Immigration Act 2014) provides that a person can only appeal against refusal of a protection or human rights claim or revocation of protection status. When paragraph 353 is applied under the new Act, the rejection of further submissions that do not amount to a fresh claim will not generate a right of appeal because there is no new protection or human rights claim.

Sections 94, 96 and 120 of the 2002 Act are amended, and a new section 94B inserted, by the Immigration Act 2014. The amendments were fully commenced from 6 April 2015, with some transitional provisions made for some decisions made and claims brought prior to that date. See the Appeals transitional guidance and Section 7 of this guidance for more details.

2.4 The Immigration Rules

Paragraph 353 in Part 12 of the Immigration Rules applies to further submissions on protection and human rights grounds. It sets out the circumstances in which further submissions will be considered and, if rejected, how to determine whether they amount to a fresh claim.

Paragraph 353B sets out when exceptional circumstances should be considered. This includes factors such as character, conduct, criminal record, compliance with reporting conditions, temporary admission and bail, and length of time spent in the UK beyond the migrant's control.

Paragraph 349 of the Immigration Rules sets out the criteria for dependants in asylum claims and may be relevant when considering further submissions involving family members.

Appendix FM and paragraph 276ADE(1) of the Immigration Rules provide the basis on which a person who is not liable to deportation can apply for leave to remain in the UK on the basis of family or private life.

Part 13 of the Immigration Rules contains the Rules for considering family and private life in criminal deportation cases. Family and private life claims from those liable to deportation for reasons other than criminal convictions are considered outside of the Immigration Rules.

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Section 3: further submissions process

3.1 Application process for failed asylum seekers

All further submissions made on protection grounds following the refusal of asylum or humanitarian protection must be made in person at the Further Submissions Unit (FSU) in Liverpool. Claimants must make an appointment to attend the FSU unless they fall into one of the exceptional categories in Section 3.3. If a claimant wishes to lodge further submissions by post, FSU must decide whether the case meets the criteria, if necessary by consulting a senior caseworker, and must inform claimants if their request to lodge a postal application has been accepted.

The FSU operates an appointment only system. To make an appointment, individuals must contact the FSU (the telephone number is 0151 213 2411). The FSU will send written confirmation of the appointment (by letter or e-mail) to the individual, including the address of the FSU and a link to the form on the Gov.UK website. Claimants should complete the form and bring it to their appointment in Liverpool. The FSU address is Level 1, 6 Union Street, Liverpool, Merseyside, L3 9AF. Further information about how to submit further submissions and a copy of the further submissions form are available on Gov.UK.

Complex Casework Directorate (CCWD) is responsible for managing further submissions in cases where there has been an initial asylum claim, including cases where the claimant has left or was removed from the UK and later returned, regardless of the initial date of claim. See Section 3.12: cases returning from abroad. However, where a foreign national offender submits further submissions, the case may be managed by Criminal Casework.

3.2 Evidence required for further submissions in person

When attending the FSU to submit further submissions, claimants are required to bring the following documents:

- a completed Further Submissions form detailing the additional information the claimant would like the Home Office to consider
- supporting documents, including, where available, any Reasons For Refusal Letters (RFRLs) or appeal determinations
- application Registration Card (ARC) if still in possession of this
- passport (of the claimant and all dependants in the UK, if not with the Home Office)
- Evidence of family life in the UK (for family or private life based submissions)
- Police Registration Certificates (if held)
- any other Identity documents (if held)
- 4 un-separated passport-sized photographs (of the claimant and any dependants)
- evidence of accommodation (if not provided by the Home Office)
- any other documents relevant to the claim

All documentary evidence to be considered must be submitted at the further submissions appointment as a decision will be made on the evidence available. The Home Office does not require principal claimants to bring dependants, including children, with them to their appointment but any information in respect of any dependents must be provided on the day. All further submissions must be recorded on the relevant computer system, see Section 4: considering further submissions.

3.3 Waiving the 'in-person' requirement

In exceptional circumstances, for example due to a disability or severe illness, further submissions from failed asylum seekers may be accepted either through local arrangements or by post. The claimant (or legal representative) must provide supporting evidence about the reasons why a postal claim or local arrangements are appropriate and obtain prior agreement from the FSU. Postal further submissions may be accepted where at least one of the following limited circumstances applies:

Inability to travel

Those who have a disability or severe illness and are physically unable to travel may submit written further submissions by post. Medical evidence that clearly indicates a disability or severe illness that results in the claimant being physically unable to travel to Liverpool must be provided to support any postal submission on this basis. Claimants must contact the FSU to discuss whether this applies in their case.

Children

Unaccompanied children under the age of 18 who wish to lodge further submissions can do so by post and are not required to travel to Liverpool. However, former unaccompanied asylum seeking children aged 18 or over who wish to lodge further submissions on protection grounds following an earlier refusal of asylum should do so in person in Liverpool. Failed asylum seekers granted non-protection based leave to remain in the UK may apply to extend that leave by way of a valid postal application on the appropriate route.

Ongoing judicial review

Where the claimant has an ongoing judicial review (JR) challenging a removal or enforcement decision, or where a JR application has been granted permission, further submissions may be accepted by post. The caseworker managing the litigation should normally consider the further submissions as part of the overall case management, and will advise of cases where it is not possible to respond to the submissions during the course of legal proceedings. However, if a JR is settled by consent, any further submissions lodged at a later date, (post dating the consent order) must be lodged in person unless the consent order specifies otherwise. If in doubt, caseworkers must contact their judicial review team.

Removal is imminent and the individual is detained

Where an individual is detained pending removal and wishes to make further submissions, they should immediately contact the team handling their case, who will advise them on the action to take. It will usually be appropriate for the removals caseworker to obtain the further submissions by fax or email and assess whether a

decision can be made quickly, so that the late claim can be resolved and the individual granted leave or removed as planned.

Criminal cases

Where an individual is serving a custodial sentence they can submit further submissions by post or fax to Criminal Casework. In such cases the further submissions should be considered, where possible, before the end of the individuals' sentence so that, where appropriate, removal action can be taken as soon as possible.

Cases in the Family Returns Process

In family cases, it may be appropriate to accept further submissions at a local reporting event where self check-in removal directions are imminent or the Family Returns Process is at an advanced stage. There may also be other exceptional reasons, for example, where a single parent is unable to make alternative childcare arrangements and would face particular difficulties as a result and it is in the best interests of the child - though they would be expected to fully comply with the family returns process. Where a case is being considered as part of the Family Returns Process, caseworkers should consult with the relevant family engagement caseworker as appropriate.

Individual comes to light through enforcement action

Where a failed asylum seeker or illegal migrant is encountered as a result of enforcement action, they should not normally be released solely on the basis of a stated intention to make further submissions. Further submissions can be submitted in person to enforcement staff where the person is detained and should be considered quickly so that leave can be granted and the individual released where appropriate, or they can be removed quickly following refusal.

Those who raise non-protection based further submissions

Where a failed asylum seeker wishes to raise further submissions on non protection grounds, for example, on the basis of family or private life, they should submit a valid postal application (with the appropriate fee) as set out in Section 3.9 below, although they can submit their submissions in person in Liverpool. Regardless of how the submissions are lodged, paragraph 353 must still be applied.

3.4 Protection based further submissions sent by post

If a failed asylum seeker submits protection based further submissions by post and they do not fit one of the exceptional case types in Section 3.3, they must be rejected without substantive consideration using the standard letter ASL.4093. This template is on Doc Gen in the Miscellaneous and Acknowledgements folder. The further submissions should be returned to the sender (either the legal representative or the claimant) with the original letter. No copy should be retained on the Home Office case file, however CID notes must be updated to reflect the action taken.

3.5 Action Reporting Centres should take

Reporting Centres must **not** accept any further submissions from those who are not detained unless they fall within one of the exceptional categories set out in Section 3.3 above. If an individual attempts to lodge further submissions at a reporting event, caseworkers must explain that they will need to make an appointment at the FSU to lodge further submissions in person, or provide sufficient evidence to show they fall into one of the exceptional categories; or make a valid postal application for leave to remain in the UK on the appropriate route.

3.6 Timescales in section 4 support cases

Where an application for section 4 support is submitted, any further submissions lodged at the same time, or that are pending, should normally be decided within 5 working days. In section 4 cases where further submissions involve vulnerable adults or children, the case should be prioritised and should normally be considered within 2 working days. In cases where it is not possible to consider the further evidence and respond within these timescales, it may be appropriate to grant support. See Section 4 support instructions for further guidance.

3.7 Medico-Legal Reports

Where a referral for a Medico-Legal Report (MLR) is received as part of further submissions, this will not necessarily prevent continued consideration of the case or removal action. Caseworkers should consider the referral in the context of the rest of the evidence available, in particular the Immigration Judge's findings at appeal. For example, where a court has previously concluded that although there is evidence of physical harm, the credibility of the claimant calls into question the account of how that harm was caused, it will not usually be appropriate to suspend consideration of the further submissions to wait for an MLR to be produced. An MLR can only provide a clinical opinion, it cannot confirm when, where and who inflicted the injuries. See the Court of Appeal Judgment in MN (Sri Lanka) v SSHD [2014] EWCA Civ 1601.

Caseworkers must refer such cases to a senior caseworker to review the case. If considered appropriate, the senior caseworker may agree to suspend decision making, pending confirmation that an MLR will be provided within the timescales set out in the MLR policy. However, there would need to be good reason as to why such evidence was not previously sought and submitted before a decision was made on the initial asylum claim. Caseworkers must also consider whether an MLR referral will add any weight to the information already available. Also see the Asylum Instruction, Medical Legal Reports.

3.8 Dependants

Where a spouse, civil partner, unmarried or same-sex partner or minor child of the principal claimant was treated as a dependant on the initial asylum or human rights claim and still wishes to be treated as such, they should continue to be considered as a dependant on the further submissions. See paragraph 349 of the Immigration Rules for the definition of a dependant in asylum cases. Where a minor child was treated as a dependant on the initial asylum claim but turns 18 **before** further submissions are submitted, they will need to make a first protection claim or apply for

leave to remain in their own right. See the Dependants and former dependants instruction for further guidance.

3.9 Non-protection human rights cases

Further submissions made on ECHR Article 3 (medical) or Article 8 family or private life grounds following the refusal or withdrawal of an earlier application and the conclusion of any appeal must normally be submitted as a valid application to UK Visas and Immigration (UKVI) Temporary Migration unless they are made in the context of deportation. Further submissions in non-deportation cases can be submitted by post to the address on the application form or in person at a Premium Service Centre by way of a valid application on:

- the FLR(FP) form on the basis of family and private life
- the FLR(O) form on the basis of medical grounds

The circumstances in which the requirement to submit a valid application will not be applied are set out in paragraph 276A0 of the Immigration Rules and in paragraph GEN 1.9 of Appendix FM of those Rules. In cases where the exemptions do not apply and a valid application is not made, caseworkers can consider whether to reject the request to consider further submissions and advise the claimant that they should make a valid application.

Alternatively, where further submissions are submitted, for example in response to a Section 120 notice by way of a statement without a valid application, caseworkers can deal with such claims under paragraph 353 and either grant leave (if appropriate) or enable enforcement action to be taken against those who submit such claims to frustrate removal.

In criminal deportation cases where Article 8 issues are raised, caseworkers must consider whether the family and private life rules in Part 13 are met. See Criminality guidance for Article 8 ECHR cases.

3.10 Cases managed by Immigration Enforcement

Removals Casework (RC) or the National Removals Command (NRC) are responsible for non-asylum cases that raise further submissions on human rights grounds not related to protection at the removals stage, except in most deportation cases. Individuals subject to removal (rather than deportation) are not able to circumvent the need for a valid application accompanied by the appropriate fee unless the exemptions in Gen 1.9 of Appendix FM apply. If further submissions are received, RC and NRC should liaise with Temporary Migration to ensure that the submissions are considered promptly.

Further submissions that are managed by Criminal Casework (CC) and Special Cases Unit (SCU) at the removals or deportation stage should be considered in consultation with temporary migration or asylum as appropriate so that unfounded further submissions do not end up delaying the removals or deportation process.

3.11 Considering suitability for detention

When further submissions are lodged by those who are not already detained, caseworkers must consider whether the case is suitable for routing into detention to effect removal in accordance with the General Detention criteria set out in the Enforcement Instructions and Guidance. The further submissions must be able to be decided quickly so that the individual can be granted leave or removed as appropriate. Cases which may be suitable include (this is not an exhaustive list):

- absconders who later resurface to make further submissions or those who have otherwise failed to comply with the asylum process
- those who have lodged repeated unfounded claims designed to delay removal
- those who have previously given false or unreliable information about the reasons why they cannot return to their country of origin to avoid enforced removal

3.12 Further submissions made on return from abroad

Individuals returning from abroad who raise further submissions are expected to do so **in person** at the port of entry to the UK. Where a claimant returns from abroad, regardless of the length of time since they were last in the UK, the case must be dealt with as a further submission unless:

- the case has been returned from another EU Member State under Dublin Regulations because the UK has accepted responsibility for the claim (and a substantive decision has not been previously taken, nor the application withdrawn under paragraph 333c of the Immigration Rules) or there are other TCU reasons why the UK is keeping the case
- the case was incorrectly withdrawn under Paragraph 333C of the Immigration Rules
- it is a multiple claim (a claimant applies for asylum again in a different identity to their initial claim): this must still be dealt with as a further submission by applying Paragraph 353, but it must be recorded as a 'new' claim on Home Office records

Where removal action is considered and further submissions are made by a failed asylum seeker at a port of entry, the case should be referred to the National Removals Command Gatekeeper to consider whether the individual can be detained to effect removal. If detention is not appropriate, the individual should be granted temporary admission to a reporting centre and advised to make an appointment to attend the FSU in Liverpool in person. Any evidence they produce at port must be noted on CID, retained and forwarded to FSU immediately. The relevant computer systems must be updated with a clear indication as to the reasons why temporary admission has been granted. See Section 4: considering further submissions.

Those who fail to make or attend an 'in person' appointment at the FSU will have their case considered on the evidence available. Where sufficient evidence to make a decision is provided by the individual in person at the port of entry, the further submissions may be decided without a further appointment where appropriate.

This section also applies to those who lodge further submissions in country after having returned from abroad, whether they approach FSU for an appointment or when encountered by Immigration Enforcement.

3.13 Legal aid

The availability of legal aid is administered by the Legal Aid Agency (LAA), the Scottish Legal Aid Board (SLAB) and the Legal Services Agency Northern Ireland (LSANI). Failed asylum seekers who wish to make further submissions may be entitled to advice and assistance to complete the further submissions form. Those who have had a previous human rights claim refused, but who have never claimed asylum, and wish to make further submissions may also be entitled to legal assistance to help with the application process. This does not generally include funding for travel costs.

Once the further submissions have been made, they will be carefully considered by the Home Office. If it is decided that the further submissions amount to a fresh claim, legal aid may be available until any associated appeal rights are exhausted. Further information about eligibility for legal aid can be found at the following links:

- GOV.UK for England and Wales
- SLAB information line: 0845 122 8686 or at SLAB for Scotland
- LSANI information line: 028 9040 8888 or at LSANI for Northern Ireland

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Section 4: consideration process

Caseworkers dealing with further submissions from failed asylum seekers that raise protection grounds must consider them in accordance with the principles set out in the asylum instruction, Assessing credibility and refugee status. Further submissions on ECHR Article 8 grounds in non-deportation cases, including those made by way of a valid application, must be considered in accordance with this instruction and relevant family guidance at: IDI Chapter 8: Appendix FM: 1.0b Family and private life – 10 year route'. Further submissions on ECHR Article 8 grounds in criminal deportation cases must be considered in accordance with part 13 of the Immigration Rules. Further submissions in deportation cases, for reasons other than criminal convictions, must be considered outside the Immigration Rules. Further submissions in all cases must be considered in accordance with this instruction.

In all cases, where **new** information is provided it must be considered alongside the previous material, taking all evidence available into account. However, where further submissions simply repeat information that has already been considered, caseworkers should refer to the previous refusal and appeal determination in rejecting the claim – there is no need to provide detailed reasons again if the issues have already been properly considered previously.

Further submissions are not defined in Paragraph 353 of the Immigration Rules. The purpose of the rule is to provide a mechanism for deciding whether a fresh claim has been made. Where it is decided that a fresh claim has not been made, there is no right of appeal against refusal of further submissions, including refusal of repeat applications. However, where further submissions are refused but it is considered that there is a fresh claim on asylum or human rights grounds, a right of appeal is generated under section 82 of the Nationality, Immigration and Asylum Act 2002 as amended by the Immigration Act 2014.

The case of R (Waqar) v SSHD (statutory appeals / paragraph 353) (IJR) [2015] UKUT 169 (IAC) (25 March 2015) confirms that paragraph 353 remains relevant under the new appeals regime established by the Immigration Act 2014. Although the 2014 Act states that the refusal of any human rights or protection claim will attract a right of appeal, a further submission is not a human rights or protection claim if it does not satisfy the test in paragraph 353. Therefore, there is no right of appeal against the outright refusal of further submissions which do not meet the test in paragraph 353.

4.1 Consider whether to grant any form of leave

In all cases where further submissions are received, caseworkers must first decide whether or not to grant leave for asylum or human rights reasons, family or private life under the Immigration Rules or on the basis of exceptional circumstances. Caseworkers **must** consider whether the new evidence, taken together with the old material (including any appeal determination, previous statements, or interviews), and any other change of circumstances, for example more recent country information or caselaw where applicable, should result in a grant of leave.

The starting point must always be the findings in any **final** appeal determination which override conclusions in the original decision letter. For example, if the original refusal letter disputed nationality but an Immigration Judge did not accept that conclusion, the nationality accepted in the final appeal usually takes precedence. However, care must be taken when a court determination is based on caselaw that no longer applies. For example, the judge may have found that a claimant can be discreet about their sexuality to avoid persecution. This finding, although part of a final appeal, must be considered in light of more recent caselaw which states that an individual cannot be expected to be discreet to avoid persecution. See HJ (Iran) and HT (Cameroon) v SSHD [2010] UKSC 31.

Depending on the facts of the case, it may be appropriate to interview the claimant again. This can be done during the FSU appointment, applying principles set out in the instruction, 'Conducting the Asylum Interview'. It may also be necessary to interview those who apply on human rights only grounds, for example, an individual who asserts rights only under article 8 and claims their private life would be adversely affected if returned due to their sexual orientation.

Where a failed asylum seeker has not previously been interviewed about their claim it may be necessary to arrange an interview, although a decision can be made if there is sufficient evidence to reach an informed decision. If an interview is arranged this must establish details about the initial claim and the further submissions. Where a claimant has attended a previous interview, a subsequent interview may be used to assist caseworkers to conclude the case. Questions should focus on the matters in dispute – there is no need to ask questions about issues that have already been considered. However, where additional evidence casts doubt on previous findings, such matters must be addressed. If an interview is deemed necessary and arranged for a later date because it cannot be conducted during the FSU appointment, and the claimant subsequently fails to attend without adequate explanation, any further submissions already lodged in person at the earlier FSU appointment must be decided on the information available.

In further submissions raising protection issues, where the decision is anything other than to grant refugee status along with the usual 3 or 5 years leave to remain, reasons why the individual does not qualify for refugee status or the usual grant of leave must be provided. Where these reasons have already been covered by an earlier appeal, this should be brief but if new evidence is raised, caseworkers must demonstrate that it has been considered. There will only be a right of appeal under section 82 of the 2002 Act (as amended by the Immigration Act 2014) if the further submissions are considered to amount to a fresh protection or human rights claim under paragraph 353.

Appeals dismissed under detained Fast Track Rules

Where further submissions allege unfairness on the basis that the individual's appeal was processed too quickly under the Fast Track Rules (FTRs), caseworkers must consider the impact of the expedited appeals process on the claimant's ability to properly present their case. This will include whether the claimant provides additional evidence at the further submissions stage that they could and would have relied on earlier had their appeal been processed under the Principal Tribunal Rules.

Where an appeal was determined under the 2014 FTRs, it is open for the claimant to make an application under Rule 32 of the Principal Tribunal Procedure Rules 2014 to have the decision of the First-tier Tribunal set aside and to have their appeal re-determined. This is following the Court of Appeal Judgment in The Lord Chancellor v Detention Action on 29 July 2015, which concluded that the Fast Track Rules were unlawful. Claimants making further submissions on the basis of their appeal being processed too quickly under the 2014 FTRs should therefore be invited to make an application to the First-tier Tribunal under Rule 32.

Consider whether exceptional circumstances prevent removal

It is Home Office policy to remove illegal migrants from the UK unless it would be a breach of the Refugee Convention or ECHR, or there are exceptional circumstances for not doing so in an individual case.

Where further submissions on asylum or human rights grounds (in non-deportation cases) are refused, paragraph 353B requires caseworkers to consider whether exceptional circumstances prevent removal. See guidance on considering paragraph 353B in Chapter 53 of the Enforcement Instructions and guidance (EIG). Where exceptional circumstances are claimed, they must be considered in accordance with this guidance. Exceptional circumstances can also be considered where an asylum or human rights claim has been refused, appeal rights have been exhausted and there are no outstanding further submissions. In such cases paragraph 353B should be applied.

Further submissions do not result in a grant of any leave

If it is **not** appropriate to grant any leave and the further submissions are to be rejected, caseworkers must then go on to decide whether they amount to a fresh claim on asylum or human rights grounds. See section 4.2 below.

4.2 Considering whether there is a fresh claim

Caseworkers only need to decide if further submissions amount to a fresh claim on asylum or human rights grounds when they have already considered the additional evidence provided, and decided not to grant any leave. In such cases, caseworkers must then consider whether the further submissions amount to a fresh claim. The claimant will only be entitled to an in-country right of appeal if it **is** accepted that there is a fresh claim.

Paragraph 353 states that submissions will amount to a fresh claim if they are **significantly different** from material that has already been considered. Submissions will only be significantly different if the content:

- has not already been considered; **and**
- taken together with previously considered material, creates a realistic prospect of success before the Tribunal on protection or human rights grounds, including claims under Article 8 ECHR (which will be considered under the Family or Private Life Rules, where appropriate)

Caseworkers must consider the further submissions against this ‘two part test’.

The first test: has the material already been considered?

If the material, in whatever form it takes, has previously been considered by the Home Office or by an Immigration Judge at appeal, the first test required in paragraph 353 is not met and there is no fresh claim. In such cases, it is not necessary to consider whether the material creates a realistic prospect of success (the second test) and the further submissions can be rejected without being considered as a fresh claim. Caseworkers must write a brief letter referring to previous correspondence, which must make clear that the further submissions are not recognised as a fresh protection or human rights claim. The letter must not reflect a consideration of the Immigration Rules other than paragraph 353 and must not refer to an appeal right other than for decisions previously issued.

The second test: is there a realistic prospect of success?

If the material **has not** previously been considered, caseworkers must assess whether the new material, taken together with material previously considered, creates a realistic prospect of success. The question is whether the issues raised are at least arguable and **could** lead an Immigration Judge to take a different view. Caseworkers cannot conclude there is no realistic prospect of success just because the claimant’s previous account was found to lack credibility. A claimant may have been untruthful in the past but be telling the truth now. An assessment of credibility must be based on all evidence available, taking into account the findings at appeal.

Material must not be discounted entirely on the basis that it could or should have been disclosed earlier. However, caseworkers should challenge late disclosure, especially if there is no reason why it could not have been raised sooner. The need to challenge late disclosure is of particular relevance to submissions raised at the point of removal, where the claimant has had plenty of time to raise such evidence much earlier in the process but chose not to do so.

Consideration includes old and new material

Caseworkers must consider **all** the available evidence when deciding whether there is a realistic prospect of success at appeal. Where further submissions are based wholly or partly on new evidence, this must not be considered in isolation, but must be considered in conjunction with the material previously submitted. The question is whether, in light of all the evidence available, the new material could persuade an Immigration Judge – in other words whether it is arguable notwithstanding rejection.

If the caseworker considers that this test is met, the further submissions must be treated as a fresh protection or human rights claim and the refusal will attract a right of appeal. If this test is not met, the caseworker must refuse the submissions, making it clear that they have not been accepted as a fresh claim meaning that there is no right of appeal. Caseworkers must provide reasons why the further submissions have not been accepted as a fresh claim.

If a claimant challenges a decision that further submissions do not amount to a fresh claim by lodging a judicial review, the Court will ask whether the decision was

reasonable. The decision will be reasonable if the caseworker has carefully and objectively considered further material taken together with previously considered material, against the correct legal test and alongside any relevant circumstances (such as country situation), and concluded that the new material does not create a realistic prospect of success at appeal.

Considering asylum and human rights issues separately

In certain cases, caseworkers may consider the protection aspect and the human rights issues separately. For example, further submissions that repeat previously considered protection grounds but raise new Article 8 grounds. In such cases, the protection grounds may not amount to a fresh claim because the material has previously been considered and dismissed. However, the Article 8 grounds may amount to a fresh claim if not previously considered and there is a realistic prospect of success before an Immigration Judge. In these circumstances, the protection grounds may be rejected without a right of appeal and the Article 8 claim accepted as a fresh claim under paragraph 353.

4.3 Asylum Support

Where an application for section 4 support is lodged, caseworkers must ensure that a decision on any outstanding further submissions is made within 5 working days wherever possible. If it becomes apparent that this deadline will not be met, the case should be flagged to a team leader.

Caseworkers must closely monitor cases to check that further submissions are not abusive, clearly unfounded or repetitious. As part of this, caseworkers must consider whether a decision can be made on the same day and, if refused outright without a right of appeal, make arrangements to detain those who are readily removable pending removal. Where further submissions are rejected and there is no right of appeal, asylum support must be refused or terminated. If it appears that the claimant is entitled to continue to receive support for another reason, caseworkers should refer to the guidance on ceasing asylum support.

If the Asylum Support Tribunal (AST) lists an appeal against the termination of support on grounds that there is an appeal against the outright refusal of further submissions, you must write to the Tribunal to apply for the appeal to be struck out on the basis that there is no right of appeal against the outright refusal of further submissions. If an appeal is heard by the AST where the appellant argues that support should not have been terminated because there is an outstanding right of appeal against the outright refusal of further submissions, the appeal must be defended on grounds that there is no right of appeal against the outright refusal of further submissions. Those whose further claims are rejected, and who have no other basis to stay, are expected to leave the UK.

Where further submissions are refused but treated as a fresh claim under paragraph 353, there is a right of appeal. Caseworkers must ensure that asylum support is not terminated until such appeal rights are exhausted.

In all cases where any form of leave is granted, caseworkers must ensure that where a claimant is in receipt of asylum support, arrangements are made for this to be

terminated. See guidance on Asylum support: Section 4 policy and processes for details on terminating support.

4.4 Refusal letters and section 120

Section 120 of the 2002 Act imposes an ongoing duty on claimants to raise new matters as soon as reasonably practicable after they arise. However, once a claimant has had a claim refused and further submissions rejected, they are expected to leave the UK and must not be given mixed messages about submitting yet further information when they have no basis to remain here. Caseworkers must therefore only include section 120 wording in further submissions refusal letters on the rare occasions where someone has not been provided with this information as part of a previous refusal.

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Section 5: when to apply paragraph 353

5.1 Earlier protection or human rights claim

Paragraph 353 only applies where an earlier protection or human rights claim has been refused, withdrawn or treated as withdrawn under paragraph 333C of the Immigration Rules. Paragraph 353 **does not** apply in any of the following circumstances:

- a claimant has not previously lodged a protection or human rights claim
- a claim is pending and an initial decision has not been made
- there is an appeal pending against a previous claim

The claimant must have raised protection or human rights issues by means of a claim to the Home Office. For example, paragraph 353 cannot be applied where asylum or human rights grounds are raised for the first time in grounds of appeal.

5.2 No appeal pending against refusal of a previous claim

Paragraph 353 only applies where any **appeal** is no longer pending against a previous refusal of a protection or human rights claim. If there is an appeal pending, the claimant must raise all relevant matters, including any material that comes to light after the decision has been made but before the appeal hearing, in the context of that appeal.

Paragraph 353 also applies in cases where an earlier decision did not generate any right of appeal – because there is no pending appeal. In other words, there does not have to have been an appeal for paragraph 353 to apply to further submissions raised after an earlier claim has been refused. For example, if a claim was certified under section 96 of the Nationality, Immigration and Asylum Act 2002, or if an asylum claim had been withdrawn or treated as withdrawn, there would have been no statutory appeal, but any further submissions must still be considered by applying paragraph 353. The exceptions to this are set out in Section 6.

In non-deportation cases, caseworkers must be aware that although a ‘decision to remove’ previously triggered a right of appeal even where another immigration decision did not, this is no longer the case following the Immigration Act 2014 (which fully came into force on 6 April 2015). Firstly, the effect of the amendments to the appeals provisions (in section 82 of the 2002 Act) is that an appeal can only be brought against a decision to refuse a protection or human rights claim, or to revoke protection status. In addition, the Immigration Act 2014 created a single removal decision. Section 10 of the Immigration and Asylum Act 1999 (as amended by the Immigration Act 2014), provides that a person is removable if they have no leave to remain, without a further decision being required.

Where there is no appeal pending and the claimant is appeal rights exhausted (ARE) either because there was no right of appeal, they did not appeal or the appeal has

been dismissed, withdrawn, abandoned or has lapsed, the caseworker must apply paragraph 353 to any further material raised.

5.3 Issues raised must relate to removal

Paragraph 353 only applies when further submissions raise asylum or human rights issues that allege the UK would be in breach of our international obligations under the Refugee Convention or the ECHR by removing the individual. This includes applications based on ECHR Article 8. If the person is not alleging that removal will breach either Convention, but is instead making some other kind of human rights argument, for example, relating to the termination of asylum support, paragraph 353 does not apply.

It is not necessary for the claimant to **explicitly** refer to the ECHR for further submissions to constitute a human rights claim. If the claimant has previously been refused asylum or leave on the basis of a human rights claim, and appeal rights relating to that claim are exhausted, it is appropriate to apply paragraph 353 in respect of any human rights issues raised relating to removal.

A claimant who is ARE in relation to their asylum claim may apply for support under section 4 of the Immigration and Asylum Act 1999. The asylum support application must be considered against the criteria for granting that support (without reference to paragraph 353). For further information on entitlement to support see Asylum support: Section 4 policy and processes.

5.4 Withdrawn asylum claims

Paragraph 353 may be applied to further submissions made after an original asylum claim has been withdrawn or treated as withdrawn under paragraph 333C of the Immigration Rules. In such cases, further submissions may succeed on the first test (material has not already been considered) as the content may not have been considered previously. However it does not automatically follow that the submissions will meet the threshold to succeed at the second test (that, when taken together with the previously considered material, the submissions create a realistic prospect of success before an Immigration Judge, notwithstanding the rejection of those submissions). For further information, see Withdrawal of applications.

5.5 No connection between initial claim and further submissions

Subject to section 6 below, in cases where a claimant's further submissions are entirely different to their original protection or human rights claim, paragraph 353 must still be applied where the conditions set out above are met. For example, someone may initially claim asylum due to a fear of persecution on political grounds which is refused and dismissed at appeal but subsequently claim on religious or Article 8 grounds. Despite the clear differences, this is still treated as a further submission and not an 'initial' claim, so caseworkers must apply paragraph 353.

5.6 Initial asylum or human rights claim certified under section 94

Subject to section 6 below, paragraph 353 must be applied to further submissions where the initial claim has been certified as clearly unfounded under section 94 of the Nationality, Immigration and Asylum Act 2002, the claimant is still in the UK and has not exercised their out of country appeal. This is in line with the Judgment in ZT (Kosovo [2009] UKHL 6). For further information on handling NSA cases, see Certification under section 94 of the NIA Act 2002.

5.7 Initial human rights claim certified under section 94B

Subject to section 6 below, paragraph 353 must be applied to further submissions where the initial claim has been certified under section 94B of the Nationality, Immigration and Asylum Act 2002, the claimant is still in the UK and has not exercised their out of country appeal. For further information, see Section 94B of the Nationality, Immigration and Asylum Act 2002.

5.8 Claimants who leave and then later return to the UK

If a claimant has previously been refused leave in relation to their protection or human rights claims, any appeal is no longer pending, and after having left the UK they then return and attempt to raise such issues again, paragraph 353 applies regardless of how long they have been out of the UK (subject to section 6 below). If the submissions are rejected but it is accepted that there is a fresh claim, caseworkers must decide whether to certify under section 96 (and in deportation cases, if section 96 does not apply, then section 94B). If a decision is made to reject the further submissions and it is not accepted that the submissions give rise to a fresh claim, the claimant should be refused leave to enter or remain with no right of appeal.

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Section 6: When paragraph 353 does not apply

This section should apply to very few cases where individuals who have had previous asylum claims or human rights applications refused and have submitted further submissions. It sets out the limited circumstances in which paragraph 353 should **not** be applied.

6.1 Pre- 2 October 2000 cases

Where a claimant lodged an asylum claim and this was refused by way of an appealable decision made **before** 2 October 2000 **and** where no further decision has been made since that date which gave the claimant an opportunity to appeal on human rights grounds, paragraph 353 must not be applied to human rights submissions subsequently made.

This only applies to human rights submissions and applies even where the appeal itself took place **after** 2 October 2000. However, even if these conditions are met, paragraph 353 should be applied if **either** of the following conditions are met:

- the human rights issue was considered and rejected in the context of the ECHR at the asylum appeal against the pre 2 October 2000 decision
- there was a basic finding of fact made at that appeal which means that any claim based on those facts is likely to fail, for example, the claimant may have maintained a history or nationality found to be false and would therefore not be entitled to another appeal relying on the same false information

These cases are sometimes referred to as Pardeepan cases following a decision of the Immigration Appeal Tribunal (IAT).

6.2 Cases refused asylum but granted at least 12 months' leave before 6 April 2015

Where a claimant was refused asylum before 6 April 2015 but granted another form of leave in **excess of one year**, they would have had a right of appeal against the refusal of asylum under section 83 of the Nationality, Immigration and Asylum Act 2002. This was repealed on 6 April 2015 by the Immigration Act 2014. However, as they were granted leave on another basis, they will not have been able to appeal on human rights grounds under previous appeals provisions. Under section 82 of the 2002 Act (as amended by the Immigration Act 2014), the refusal of a protection or human rights claim attracts a right of appeal – irrespective of whether leave is granted for other reasons, for example, on a discretionary basis. Caseworkers must therefore not apply paragraph 353 to human rights further submissions lodged after asylum was refused where there has not been any previous opportunity to appeal to the Tribunal on human rights grounds. This section only affects cases decided before 6 April 2015.

6.3 Cases refused asylum but granted less than 12 months leave before 6 April 2015

Where a claimant was refused asylum before 6 April 2015 but granted another form of leave for **one year or less** there was no right of appeal against the asylum refusal because section 83 of the 2002 Act only provided a right of appeal where leave of more than one year had been granted. Such individuals had no opportunity to appeal against the refusal of asylum, where they were granted less than one year's leave, whereas in contrast the new appeals provisions under section 82 of the 2002 Act (as amended) do provide that opportunity. Therefore, caseworkers should not apply paragraph 353 to any asylum or human rights submissions lodged after the refusal of the asylum claim in cases where limited leave of one year or less was granted for other reasons before 6 April 2015.

For example, unaccompanied asylum seeking children may have been refused asylum but granted less than 12 months' limited leave due to lack of adequate reception arrangements. Such individuals may subsequently make an application for further leave or lodge further submissions on protection grounds. Where they have not previously had any opportunity to bring an appeal against the refusal of asylum, Paragraph 353 should not be applied. This principle may also apply to those granted 6 months limited leave under the Restricted Leave or Discretionary Leave policies. This section only affects cases decided before 6 April 2015.

6.4 Asylum submissions following human rights refusal

Where a claimant has had a previous human rights claim refused but has never claimed asylum, paragraph 353 should not be applied to the asylum claim. In these cases, caseworkers must consider the asylum claim in the same way as an initial claim under Part 11 of the Immigration Rules, although the timing of the claim and any reasons provided as to why protection issues were not raised earlier are relevant factors that need to be considered. It may be appropriate to omit an interview in the circumstances set out in paragraph 339NA of the Immigration Rules and, if a decision is made to refuse, certify the decision under section 96.

6.5 Dependants

If a person is named as a dependant on another person's asylum or human rights claim, and they then go on to make a claim in their own right, paragraph 353 does not apply. This is because the person has not made an earlier asylum or human rights claim in their own right. However, it may be appropriate to certify any subsequent decision to refuse under section 96 on the grounds that they received a one-stop notice under section 120 of the 2002 Act when they were dependant on another person's claim. See the current appeal and litigation guidance page for further information.

6.6 Discretion to appeal on the grounds of fairness

Claimants may alert us to the fact that they failed to attend their appeal hearing, through no fault of their own, for example, because the hearing notice had been sent to the wrong address. In such circumstances, the claimant may request a further right of appeal on the grounds that it was unfair that the appeal was dismissed without the opportunity to attend and give evidence. In this situation, it is not

appropriate to apply paragraph 353. The caseworker should look into the details of the case and consider whether or not to exercise discretion to generate a further right of appeal on fairness grounds. These cases are sometimes referred to as Kazmi cases after a decision of the IAT (R v SSHD Kazmi [1995] ImmAR73). See Implementing Substantive Decisions for further guidance.

6.7 Claims lodged overseas

Paragraph 353 does **not** apply to submissions based on protection or human rights made from overseas. The UK's international obligations under the Refugee and ECHR Conventions do not extend to the consideration of asylum claims lodged abroad and there is no provision in the Immigration Rules for someone to be given permission to travel to the UK to seek asylum or other protection. If a claimant has been removed from the UK and attempts to submit an asylum claim or further submissions from another country (for example via a British Embassy), paragraph 353 does not apply and the claim must not be considered.

Those who are abroad who wish to come to the UK must make an application for entry clearance in the appropriate category under which they wish to apply. Such applications will be considered in accordance with the relevant Immigration Rules.

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Section 7: certification

7.1 Certification under section 94

It will not be appropriate to certify further submissions considered under paragraph 353 as 'clearly unfounded' under section 94. Where further submissions are considered to be clearly unfounded, they will not meet the fresh claim test in paragraph 353 and there will be no right of appeal against rejection. As such there is no appeal right to certify and a certificate is not required. Equally, if it is accepted that there is a fresh claim (as the new material creates a realistic prospect of success), it would not be appropriate to certify under section 94 on grounds that the further submissions are clearly unfounded.

7.2 Certification under section 94B in deportation cases

Certification under section 94B may be appropriate if the person is liable to deportation and they meet the relevant criteria. The effect of this type of certification is that any appeal against refusal can only be brought out of country. See the section 94B certification guidance for non-EEA deportation cases for further information as to whether section 94B certification is appropriate.

7.3 Certification under section 96

Section 96 of the Nationality, Immigration and Asylum Act 2002 provides a mechanism for removing the right of appeal against a decision to refuse a protection or human rights claim where that claim could have been made earlier, either at an appeal or following service of a section 120 notice. Section 96 is intended to prevent claimants from raising matters at the last minute to frustrate removal. It only applies when a right of appeal has been generated.

Paragraph 353 must be applied to any further submissions before section 96 is considered. Consideration of certification only applies to cases in which we have refused the further submissions but accepted that they amount to a fresh claim once the decision is taken to refuse. Caseworkers should refer to the guidance on the application of section 96, which is available on the current appeal and litigation guidance page.

7.4 Implementing a decision certified under section 96

Caseworkers must take the following action to implement a decision certified under section 96:

- draft a response using the appropriate refusal letter template on Doc. Gen
- follow the instructions on minute sheet ASL.2899
- ensure that relevant computer systems are updated (see Annex A)

Annex A: updating CID

Caseworkers must also refer to the Asylum Case Owner CID Guide and the Implementing Substantive Asylum Decisions Asylum Instruction for full details on updating CID and serving the decisions. The family and private life 10 year guidance provides details on implementing decisions in non-protection based human rights cases. In protection based further submissions, the decision process must include liaison with the support team to review and/or discontinue support promptly.

Recording receipt of further submissions – all cases

In most cases, where a claimant has had a previous asylum claim recorded on ACID, it will be appropriate to deal with any further evidence as a further submission **not** as a 'new' claim recorded on ACID. In all other cases, record the new evidence as a Further Submission case type as follows:

- Go to 'Case Creation/Link/Unlink' to create a new case type
- choose **one** of the following options:
  - **Further Submissions [In country, in person]:** protection based submissions only, never left the UK **and** submitted in person at a reporting event/appointment
  - **Further Submissions [In country – Postal]**: protection based submissions only, never left the UK **and** submitted by post
  - **Further Submissions [In country – return from abroad]**: protection based submissions only, clear evidence the person had left the UK – for example, lorry drop cases or where it is recorded that the person had returned/been removed – and has since travelled back to the UK
  - **Further Submissions [Port]**: protection based submissions only; person seeks permission to enter the UK and asks for asylum. Records show they are either a failed asylum seeker or a previous asylum claim was withdrawn under 333c of the Immigration Rules
  - **Further Submissions [former absconder]**: protection based submissions only, applicant was formally recorded as an absconder but has now come to the attention of the Home Office
  - **Further Submissions Art 8 only [in country, in person]**: Article 8 ECHR submissions only, never left the UK **and** submitted in person at a reporting event/appointment
  - **Further Submissions Art 8 only [In country – Postal]**: Article 8 ECHR submissions only, never left the UK **and** submitted by post.
  - **Further Submissions Art 8 only [Port]**: Article 8 ECHR submissions only, person seeks permission to enter the UK - records show they are either a failed asylum seeker or a previous asylum claim was withdrawn under 333c of the Immigration Rules
  - **Further Submissions Art 8 only [former absconder]**: Article 8 ECHR submissions only, applicant was formally recorded as an absconder but has now come to the attention of the Home Office

Updating ACID when leave has been granted

This is when the outcome of the first 'test' is a grant of any leave (See Section 4.1)
Update ACID with one of the following case outcomes as follows:

- locate the ‘Further Submissions’ case type
- update the Case Outcome tab with the relevant decision from the following:
  - Granted Asylum and LTE/LTR
  - Refuse Asylum – Grant HP
  - Refuse Asylum, Grant Family LTR
  - Refuse Asylum, Grant Private LTR
  - Refuse Asylum – Grant DL
  - Refuse Asylum, Grant LOTR
- ensure that expiry date of the leave is recorded under ‘expiry date’
- ensure that the correct condition code is recorded (1 or 1A)

Updating ACID when it is decided not to grant leave and not to accept a fresh claim for asylum or human rights

Use this case outcome when the further submissions have been rejected **and** there is no fresh claim, therefore no right of appeal. Update the Further Submission Case Type tab on ACID with ‘Further Submissions rejected – Paragraph 353 NO RoA’.

Updating ACID when it is been decided not to grant leave, but there is a fresh claim with an in-country right of appeal

Use this case outcome when the further submissions do not lead to a grant of leave but it is accepted that there is a fresh claim **and** it has been decided not to certify the case but to give an in country right of appeal. Update the Further Submission Case Type tab on ACID with ‘Fresh Claim refused – RoA’.

Updating CID when certifying under section 96

Use this outcome when it is decided not to grant leave, a fresh claim has been accepted and, following consideration of whether to exercise discretion, it is still considered appropriate to certify the claim under section 96(1) or 96(2) or both. See Section 7 above. Update the further submissions case type with one of the following:

- Fresh Claim Refused – s96(1) No RoA
- Fresh Claim Refused – s96(2) No RoA
- Fresh Claim refused – s96(1) & s96(2)

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