



Home Office

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

Version 4.0

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About this guidance

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

This guidance is valid for claims decided on or after 6 April 2015.

Contacts

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

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

Publication

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

- version **4.0**
- published for Home Office staff on **12 February 2019**

Changes from last version of this guidance

The guidance has been changed to emphasise that:

- caseworkers must be particularly careful when considering whether to certify a claim on credibility grounds
- an allegation of deception is an issue of credibility
- where the claim is certified, a protection appeal should be treated as if the appellant is not outside the UK, but that does not mean the appeal should be treated as if the appellant has never left the UK

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Background

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

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

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

The effect of certification under section 94 is to restrict the right of appeal against refusal so that the claimant can only appeal once they have left the UK (referred to as a non-suspensive appeal).

Policy intention behind certification

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

- preventing appeals delaying removal, where protection and human rights claims are clearly unfounded
- supporting the reduction in asylum support costs by enabling the claimant to be removed once a decision is made and certified rather than continue to be supported during an in-country appeal

What is a Protection Claim?

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

What is a human rights claim?

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

Should the claim be certified?

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

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

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

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Designated states

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

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

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

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

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

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

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

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

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

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

Meaning of 'entitled to reside'

The term 'entitled to reside' includes:

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

Doubts about nationality or entitlement to reside

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

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Case by case certification

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

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

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

Example: State A is designated for men only. The claimant is a woman entitled to reside in state A. Her claim is clearly unfounded. It should not be certified under section 94(3), but it should be certified under section 94(1).

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Further submissions

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

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

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

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

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Meaning of 'clearly unfounded'

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

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

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

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

Caseworkers must consider:

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

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

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Certifying cases involving children

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

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

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

Cases involving unaccompanied asylum seeking children (UASCs) who are not being granted any form of leave, for example because there are adequate reception arrangements in their country of origin, can also be considered for certification if the claim is clearly unfounded.

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Credibility

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

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

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

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

The Court went on to state:

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

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

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

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

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

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

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Examples of when a protection claim can be certified

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

No fear of mistreatment

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

No objective basis for feared mistreatment

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

Feared mistreatment does not amount to persecution

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

Sufficiency of protection

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

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

Internal relocation

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

not control the entire country. See: Assessing credibility and refugee status for further details.

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Examples of when a human rights claim can be certified

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

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

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

Article 8 claims

Caseworkers must refer to section 1.0b Family and private life – 10 year route for guidance on considering Article 8 family and private life cases except in deportation cases. In criminal deportation cases, caseworkers must refer to Criminality guidance for Article 8 ECHR cases.

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

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

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

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

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

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

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

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

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

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

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

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

This is not an exhaustive list.

Other human rights claim likely to be clearly unfounded

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

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When not to certify a clearly unfounded claim: exceptions

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

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

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

Official - sensitive: start of section

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

Official - sensitive: end of section

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Miscellaneous issues

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

Non compliance

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

Dependants

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

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

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

Families of mixed nationality

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

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

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Certification process

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

Caseworkers who are not non-suspensive appeals (NSA) trained but consider that they may have a case suitable for certification must refer the case to their senior caseworker (SCW). If the case is suitable for certification the file should be reallocated to an NSA trained caseworker.

A certification decision must be authorised by an accredited caseworker. This is referred to as a [second pair of eyes \(SPoE\)](#).

Where the claimant is entitled to reside in a designated state, a decision not to certify a protection claim must be authorised by an accredited caseworker. It is not necessary to seek such authorisation where the decision is taken not to certify a human rights claim where the claimant is from a designated state.

Certification paragraphs

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

Protection cases

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

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

Human rights cases

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

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

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Approval of decisions on protection claims: designated states

This section only applies to protection cases where the claimant is entitled to reside in a designated state.

A recommendation minute must be drafted for all proposed decisions to grant asylum, humanitarian protection or any other form of leave which must be forwarded to the [second pair of eyes process \(SPoE\)](#) for consideration and authorisation.

The caseworker must:

- gather any relevant evidence including that on the Home Office file, CID and substantive interview
- assess the evidence and claim in accordance with the relevant guidance:
 - Considering Human Rights
 - Assessing credibility and Refugee status
 - Humanitarian Protection
 - section 1.0b Family and private life – 10 year route
 - Discretionary Leave
- draft a recommendation minute to SPoE (ASL.4903)
- draft the relevant asylum/ human protection consideration minute
- draft one of the following:
 - ASL.2376ASY – Grant Refugee Status
 - ASL.2376HP – Grant Humanitarian Protection
 - ASL 2376DL – Grant Discretionary Leave
 - ASL.2376 – Article 8/ UASC – Grant Article 8 family or private life or UASC leave)
- draft the ASL.0015.IA RFRL (if asylum has been refused) with the appropriate paragraphs selected and/ or tailored as appropriate
- forward to the SPoE to consider, review and approve the decision
- refer to [SpoE process for next steps](#)

Approval of decisions on human rights claims: designated states

SPoE approval is not needed to:

- grant a human rights claim from a designated state
- refuse without certifying a human rights claim from a designated state

SPoE approval is needed for a decision to certify a human rights claim from a designated state.

Where the claimant is from a designated state and certification is not considered appropriate, the following wording should be noted on both CID notes and the grant minute:

‘This case has been identified as listed under section 94(4) as a designated state. After consideration I have decided that the claim should not be certified as clearly unfounded for the reasons outlined in the grant minute / refusal letter printed on (date).’

Further submissions post section 94 certification

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

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Explaining the certification decision

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

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

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

- it is important that separate consideration is given to the decision to refuse the claim and on the decision to certify
- there is a 2 stage reasoning process in play. It is not permissible to have an approach that simply says because the claim is rejected the claim is rejected as clearly unfounded

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

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

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

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

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

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

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Certification: recording the decision

This section provides guidance for caseworkers on recording the decision in section 94 certification cases.

Initial caseworker action: protection claim

For decisions that must be reviewed by a second pair of eyes (SPoE) the caseworkers must complete:

- one copy of the ASL.1956.IA (NSA RFRL) – you must not update the outcome fields of case information database (CID) at this point because the SPoE may overturn the decision and the date of the decision may be later
- one copy of the non-suspensive appeal (NSA) recommendation minute (ASL.4903)

Caseworkers should select their recommendation and check the box as appropriate (right click, properties, checked). In the free text box you should briefly outline why you consider the case to be certifiable or not.

You must pass the file to the accredited SPoE for the second pair of eyes check.

Initial caseworker action: human rights only cases

Prepare one copy of the template ICD.1182.IA.

You must not update the outcome fields of CID at this point because the SPoE may overturn the decision and the date of decision may be some significant time later.

You must complete one copy of the non-suspensive appeal (NSA) recommendation minute (ASL.4904), select the recommendation and check the box as appropriate.

To do this:

- 1) right click
- 2) select 'properties'
- 3) click 'checked'

In the free text box you should briefly outline why you consider the case to be certifiable or not.

Initial SPoE action

For **all** SPoE cases you must take the following action:

- 1) log the case and 'stop' (abandon) the reasons for refusal letter (RFRL) on document generator (Doc Gen) to make sure only the authorised version of the decision can be accessed and read in the future- to do this you must:
- 2) open Doc Gen and select the correct case reference and 'printed documents'
- 3) select 'RFRL' by clicking once so the document is highlighted but is not opened up on screen
- 4) select 'properties' (right click)
- 5) select 'dispatch stopped', select 'yes', then click on 'OK' giving reason for stop as – 'NSA Pre SCW Draft'
- 6) from the menu bar at the top, select 'new'
- 7) highlight the document by clicking once so that the document is highlighted not selected as above and select 'create new document'
- 8) use this to create a new RFRL and amend as appropriate (even if no amendments are needed, you must produce a new RFRL)
- 9) review the RFRL making amendments if required
- 10) confirm that both protection and human rights claims have been certified and the necessary certification paragraphs selected
- 11) print one copy of the RFRL marked clearly as 'final version'
- 12) complete the NSA recommendation and determination minute (ASL.4903) and confirm whether or not you agree with the decision, explain the reasons for your decision and indicating any changes required before final authorisation
- 13) if significant changes are required these should be completed by the caseworker and the case returned to the SPoE for the final check
- 14) return file to caseworker to complete any outstanding actions and arrange implementation of the decision
- 15) SPoE authorises outcome of case on CID

Caseworker action on receipt of file from SPoE

Action caseworkers must take on receipt of file from SPoE:

- caseworker will receive the file back to action any comments and then implement the decision
- caseworker enters the agreed case outcome on CID
- decisions must be served on the claimant at the earliest opportunity- the service of decision must not be delayed in order to pursue travel documents, see Drafting, Implementing and Serving Decisions

Official - sensitive: start of section

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Appeal stage

This section explains what happens when an out-of-country appeal is brought in a certified claim.

Where a claim has been certified under section 94 of the Nationality, Immigration and Asylum Act 2002, the appeal will take place while the claimant is outside the UK.

Any attempt by the claimant to lodge an appeal against refusal of a certified claim whilst still in the UK must be rejected by the tribunal as invalid.

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

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

This is a change from the position under section 94(9) of the 2002 Act which has been repealed but which provided that the appeal should be considered as if the appellant had not been removed from the UK.

For further guidance see: [Rights of appeal](#).

Related content

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Successful out-of-country appeals

This section explains what to do if there is a successful out-of-country appeal in a claim that has been certified.

If, following the certification of a claim under section 94 of the Nationality, Immigration and Asylum Act 2002, the out-of-country appeal is allowed, the claimant may need to be brought back to the UK.

Where instructions have been received to return the claimant, you must obtain a copy of the determination by contacting the appeals determination management unit for protection only or protection and human rights claims. Where the appeal is a human rights only claim, you must contact the relevant presenting officers unit.

A copy of the determination must be sent to the Non-suspensive Appeals (NSA) Oversight team.

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Current list of designated states

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

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

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SPoE process

The section provides information about the second pair of eyes (SPoE) process.

Designated state cases

The role of the SPoE is to review the decision of the caseworker recommending certification or non certification of designated state cases. If the claim relates to a designated state human rights claim, the claim will only be referred to a SPoE for authorisation if it is to be certified.

Non designated state cases

The role of the SPoE is to review the decision of the caseworker recommending certification or non certification of case by case claims.

SPoE accreditation

SPoE accreditation is achieved through a mentoring process where the mentee works through a series of live cases with the guidance of an accredited SPoE. Once the mentee has achieved the required standard on a consistent basis (minimum 5 consecutive decisions), they will be recommended for accreditation to the Non-suspensive Appeals (NSA) Oversight team.

Required standard

To become an accredited SPoE the mentee must be able to demonstrate the following standards have been met in all cases:

- correctly identifies cases that are both suitable and not suitable for certification, providing succinct/ constructive feedback to caseworkers if disagreeing with their decision
- all the correct paperwork is present on the case before decision service (ASL.4903/ 4904)
- all evidence has been considered and is covered in the consideration
- all objective evidence/ country information and other references are all up to date and accurate - all evidence referred to is relevant and not selective
- caselaw referred to is pertinent, current and has the correct citation
- standard paragraphs are correct and tailored appropriately
- all letters have a high standard of English and all paragraphs are numbered and spaced correctly
- the correct certification paragraphs are used
- all aspects of the case are considered fully to ensure sustainability, including, but not limited to, risk on return for trafficking victims, section 55 best interests of the child and medical considerations
- follows procedure after decision authorised, checks correct outcome entered on CID and authorises, all draft versions of letters cancelled

Relevant NSA SPoE checklists can be found on the transfer drive at:

- NSA SPoE checklist - HR only
- NSA SPoE checklist - Asylum and HR cases

Mentor responsibilities

The mentor will sign off all decisions of the mentee before they are fully accredited and will keep a log of the cases checked with any issues noted. This will allow the mentor to address gaps in knowledge or understanding and also have a record of cases completed for the mentees portfolio.

Recording cases correctly during mentoring

When completing a determination minute (ASL. 4903/ 4904) you must insert the following above the signature section:

'I am working towards accreditation [date].'

The accredited SPoE will then add in the following wording before finally authorising the decision:

'SPoE completed by [date].'

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