



Home Office

Requests for reconsiderations of human rights or protection based claims refused without right of appeal before 6 April 2015

Version 1

This guidance replaces the Requests for removal decisions guidance. It follows changes to appeals and removals introduced by the Immigration Act 2014.

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Requests for reconsiderations of human rights or protection based claims refused without right of appeal before 6 April 2015

This guidance tells you what to do if you receive a written request to reconsider a refusal decision (or to make a removal decision) from, or on behalf of, an applicant who previously made an application for leave to remain which was refused with no right of appeal. This applies to refusals made before 6 April 2015.

It replaces the 'Requests for removal decisions' guidance which applied before 6 April 2015.

Previously the Home Office would make a removal decision on request where a person met the criteria outlined in the 'Requests for removal decisions' guidance. This would trigger a right of appeal, subject to certification.

Following legal changes to appeals and removals from 6 April 2015, when the Immigration Act 2014 was fully commenced, there is no longer a specific removal decision, or right of appeal against removal. A right of appeal derives directly from the refusal of a protection or human rights claim or the revocation of protection status.

This guidance outlines the circumstances in which the Home Office will reconsider on request the refusal of a human rights or protection claim which was refused before 6 April 2015 without right of appeal.

Related content

[Contents](#)

[Appeals guidance](#)

[Requests for removal decisions guidance \(archive\)](#)

Related external links

[Daley-Murdock \[2011\]](#)

Version control and contacts

This page tells you about the current version of the requests for reconsiderations (previously requests for removal decisions) guidance and who to contact if you have any queries.

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 IBPD Enforcement 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](#).

Clearance

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

- version 1
- valid from 15 May 2015
- this version approved by Philippa Rouse, Head of Criminality and Enforcement Unit
- approved on 14 May 2015

Changes from last version of this guidance

This is new guidance. It replaces the requests for removal decisions guidance.

Related content

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[Requests for removal decisions guidance \(archive\)](#)

Related external links

Scope of requests for reconsiderations (previously requests for removal decisions) guidance

This page tells you which cases may be considered against the [criteria for accepting a request for reconsideration](#) .

This guidance only applies if a person previously made a valid protection or human rights claim which:

- would attract a right of appeal (subject to certification) if decided under the law as it applies from 6 April 2015

and

- because the person had no leave to enter or remain in the UK when the claim was refused, did not attract a right of appeal under the law which applied before 6 April 2015

In addition, the guidance only applies if the person:

- did not receive a removal decision when the application for leave to remain was refused or subsequently
- failed to leave the UK voluntarily, and
- has requested that a reconsideration (or removal decision) be made via:
 - a written request, either from the person, their legal rep or their MP
 - a judicial review (JR),
 - a pre-action protocol (PAP) letter

Protection or human rights claim not made

This guidance does not apply where a protection or human rights claim was not made. This includes where a person without leave to be in the UK was refused:

- leave under the points-based system (eg work or study leave)
- leave under another route not based on protection or human rights (eg those which from 6 April 2015 attract a right of administrative review)

These routes no longer attract a right of appeal.

The guidance does not apply to refusal of an application made on EEA grounds (for example refusal to issue a residence card). A valid application on these grounds would have attracted a right of appeal on refusal both before and from 6 April 2015, whether or not the applicant had leave to enter or remain in the UK.

If a person in one of the above situations wishes to remain in the UK they should make a further application for leave by the appropriate route, accompanied by the correct fee if applicable. Depending on the type of claim or application, this will

attract an appeal or administrative review according to the provisions in force at the date of decision. Appeal rights may be subject to certification if appropriate.

Related content

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[Appeals guidance](#)

[Administrative review guidance](#)

[EEA guidance](#)

Related external links

[Daley-Murdock \[2011\]](#)

Criteria for accepting a request for reconsideration

This page tells you when to grant a request for reconsideration.

When making a decision to accept a request for reconsideration, you should consider:

- the need to safeguard and promote the welfare of children who are in the UK
- any direct cost in supporting the applicant and dependants being met by the Home Office or a local authority (in accordance with a duty in legislation), and
- exceptional and compelling circumstances.

You should normally only agree to reconsideration when requested in the following cases:

- the refused application for leave to remain included a dependent child under 18 who had been resident in the UK for three years or more at the time of application
- the applicant has a dependent child under the age of 18 who is a British citizen
- the applicant is being supported by the Home Office or has provided evidence of being supported by a local authority in accordance with a duty in legislation
- there are exceptional and compelling reasons to reconsider the decision at this time, or
- it is operationally expedient or appropriate to reconsider the decision

A higher executive officer (HEO), senior case worker (SCW) or above should agree a decision to reconsider a decision on the basis of exceptional and compelling reasons or operational expedience and appropriateness.

Related content

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[Daley-Murdock \[2011\]](#)

Responding to request for reconsideration where criteria are met

This page tells you how to respond to correspondence, a judicial review (JR) or a pre-action protocol (PAP) where a person who falls within the scope of this guidance meets the criteria for a reconsideration on request.

Criteria Met

If one or more of the criteria for reconsideration on request are met you should write to the applicant offering reconsideration. In addition to the RED.0002 (uncharged version) you should enclose the bio data form and the RED.0003 (statement of additional grounds) for the applicant to complete and return.

On receipt of the completed RED.0003 and bio data forms and any other required documents you should first review the initial decision to refuse leave to remain on protection or human rights grounds and consider if the decision should be maintained.

If you decide that the original refusal decision was correct, or that the decision was incorrect but that it is still appropriate to refuse on other grounds, a new refusal decision should be made. You should consider all the available information to determine whether it is appropriate to certify the claim.

If it is now appropriate to grant leave, a decision should be made to that effect.

The decision should be made and should, whenever possible, be made and served within three months of the date that the returned RED.0003 form and accompanying documents were received by the Home Office.

Related content

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[Appeals guidance](#)

[Family and private life guidance](#)

Related external links

Responding to request for reconsideration where criteria are not met

This page tells you how to respond to correspondence, a judicial review (JR) or a pre-action protocol (PAP) where a person who falls within the scope of this guidance does not meet the criteria for a reconsideration on request.

If the criteria for a reconsideration on request are not met you should write to the applicant explaining this. They may make a further application by the appropriate route, accompanied by the correct fee if applicable. Refusal of an application or claim made on human rights or protection grounds will attract a right of appeal according to the provisions in force at the date of decision. Appeal rights may be subject to certification if appropriate.

A person in this situation (ie who made a human rights claim which was previously refused without a right of appeal but which would have attracted a right of appeal if it was made under the law as it applies from 6 April 2015) will not be subject to enforced removal without having received an appealable decision (subject to certification) subsequent to that refusal.

However, where the criteria for a reconsideration on request are not met and the person does not make a further application or claim by the appropriate route, the timing of any reconsideration of a previous refusal will be at the discretion of the Secretary of State, taking into account factors such as the imminence of removal.

Related content

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[Appeals guidance](#)

[Family life application guidance](#)

Responding to request for reconsideration where a protection or human rights claim was not made

This page tells you how to respond to a request for reconsideration or a removal decision where the person did not make an application or claim on human rights or protection grounds which falls within the [scope of this guidance](#).

If reconsideration is not applicable you should write to the applicant explaining this and enclosing form RED.0002 (charged).

The person may make a further application by the appropriate route, accompanied by the correct fee if applicable. Depending on the type of claim or application, this will attract an appeal or administrative review according to the provisions in force at the date of decision. Appeal rights may be subject to certification if appropriate.

Alternatively they will be notified of their liability to removal in the course of Home Office enforcement activity. This will not attract a right of appeal or administrative review.

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[Visas and immigration guidance](#)