

ASSESSING CREDIBILITY IN ASYLUM AND HUMAN RIGHTS CLAIMS

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Introduction

This instruction gives guidance on the considerations that decision makers should have in mind when assessing credibility in claims for asylum, eligibility for humanitarian protection and human rights claims. It takes account of relevant primary legislation, the Immigration Rules, the provisions implementing the European Council Directive (2004/83/EC) of 29 April 2004 on the Minimum Standards for the Qualification of Third Country Nationals or Stateless Persons as Refugees or as Persons who Otherwise Need International Protection and the Content of the Protection Granted ('Qualification Directive') and UK case law. It also takes account of the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status.

It should be read in conjunction with the Asylum Instructions (AIs) on the [Considering the Asylum Claim](#) and [Considering Human Rights Claims](#). Every decision maker should also be familiar with the [UNHCR Handbook on Procedures and Criteria for Determining Refugee Status](#)

The process of determining whether an applicant is in need of international protection often requires a decision maker to decide whether they believe the applicant's evidence about past and present events and how much weight they attach to that evidence. In determining this, decision makers must assess the credibility of the applicant and the evidence that they submit.

Application of this instruction in respect of children and those with children

Section 55 of the Borders, Citizenship and Immigration Act 2009 requires the UK Border Agency to carry out its existing functions in a way that takes into account the need to safeguard and promote the welfare of children in the UK. It does not impose any new functions, or override existing functions.

Officers must not apply the actions set out in this instruction either to children or to those with children without having due regard to Section 55. The UK Border Agency instruction 'Arrangements to Safeguard and Promote Children's Welfare in the United Kingdom Border Agency' sets out the key principles to take into account in all Agency activities.

Our statutory duty to children includes the need to demonstrate:

- Fair treatment which meets the same standard a British child would receive;
- The child's interests being made a primary, although not the only consideration;
- No discrimination of any kind;
- Asylum applications are dealt with in a timely fashion;
- Identification of those that might be at risk from harm.

The section entitled Claims Triggered by Immigration Decisions makes reference to decisions to remove. Consideration must be made of the Code Of Practices statement that there must always be a presumption in favour of not detaining a family and each family's case must be considered on its individual merits.

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/consultations/closedconsultations/keepingchildrensafe/>

Burden of Proof/Substantiating a Claim

The burden of substantiating a claim for international protection is on the applicant. He must prove to the required standard of proof that he qualifies for international protection (see also 6.4 of the AI on [Considering the Asylum Claim](#)).

When the Secretary of State considers a person's asylum claim, eligibility for humanitarian protection or human rights claim, it is the duty of the applicant to submit as soon as possible all material factors needed to substantiate his asylum claim or establish that he is a person eligible for humanitarian protection or substantiate his human rights claim. In practice the duty to ascertain and evaluate evidence to establish a claim is shared between the applicant and the decision maker, and it is for the decision maker to test all available evidence.

Paragraph 339I of the Immigration Rules states that material factors include:

- (i) the person's statement on the reasons for making an asylum claim or on eligibility for a grant of humanitarian protection or for making a human rights claim;
- (ii) all documentation at the person's disposal regarding the person's age, background (including background details of relevant relatives), identity, nationality(ies), country(ies) and place(s) of previous residence, previous asylum applications, travel routes
- (iii) identity and travel documents

The applicant does not have to prove each material fact (see below on [material facts](#)) with documentary or other evidence. It is possible for an applicant to substantiate his application and satisfy the burden of proof where he is unable to provide any independent, corroborative evidence to support his claims about past and present events, provided he can provide a coherent and plausible account of his experiences which is not contradicted by available information relevant to his claim. For example, an applicant does not have to provide evidence of past torture for a claim that torture took place to be accepted.

Evidence Submitted by Applicants

Paragraph 196 of the [UNHCR Handbook](#) states:

“Often ... an applicant may not be able to support his statements by documentary or other proof, and cases in which an applicant can provide evidence of all his statements will be the exception rather than the rule.”

Applicants often **cannot** substantiate their statements by independent documentary or other evidence, so submissions presented in writing and at asylum interviews will often be the only primary evidence in support of their claims.

Evidence may consist of:

Written Statements

Applicants often provide a written statement detailing their claim. A written statement is a useful piece of evidence that will provide the decision maker with a preliminary understanding of an applicant's case. Where there are areas of doubt in the statement or where there is a need for more information about the claim a decision maker should investigate these at an asylum interview.

If the claim is dependent upon events in the country of origin which are not mentioned in the available country of origin information, it may be helpful to consult a senior caseworker with country expertise in the central senior caseworker unit and, if necessary, the [Country of Origin Information Service](#) before the interview.

Asylum Interviews

An interview is a fact-finding exercise, at which the decision maker establishes the material facts of the claim (i.e. all the facts relevant to the substance of the claim or to the decision to be made). At the interview an applicant should be given the opportunity to explain each material claimed fact to a level of detail which a person who experienced a given incident might reasonably be expected to recall.

If, in the interview, a material claimed fact appears to be inconsistent with either the applicant's previous evidence or with generally known facts the applicant should be given an opportunity to explain or clarify this. Obtaining relevant and detailed evidence from the applicant at an interview will enable a decision maker to make a well-informed and balanced decision. (For further guidance see the AI on [Conducting Asylum Interviews](#)).

Other Documentary Evidence

Applicants may submit a variety of documents in addition to supplying a written statement and evidence at an interview. These may include newspaper or internet articles, identity documents (such as passports or identity cards), political party membership cards, arrest warrants, photographs, medical reports, and status letters of relatives granted refugee status in the UK. Decision makers should assess the validity of these documents and consider whether they are material to the claim.

In the case of [Tanveer Ahmed](#) [2002] UKIAT 000439], the Tribunal ruled that the burden of proof is upon the applicant to show that documentary evidence submitted can be relied upon. However it is for the decision maker to consider whether a document is one on which reliance should properly be placed after looking at all the evidence in the round.

Where a decision maker is unsure of the authenticity of a document they should seek advice from a senior caseworker or one with country expertise in the central senior caseworker unit. If it is not possible to determine the authenticity of a document, decision makers should take into account the general credibility of the claim and any information in the relevant [Country of Origin Information](#) report about the standards of documentation in that country in determining what weight and credence to attach to it.

(For guidance on medical reports produced by the Medical Foundation and other medical reports from other sources see the AI on [Medical Foundation](#), [Medical Evidence \(Non Medical Foundation Cases\)](#) and [Medical Foundation Policy](#)).

Establishing the Facts of a Claim (Material and Non-Material Facts)

In applying for international protection an applicant may make a number of claims about his past experiences or his present situation and profile. In order to establish whether the applicant can show to the required standard of proof that there is a need for international protection the decision maker must first assess all the claimed facts and distinguish which facts are material to the claim and which are not.

A material fact goes to the core of a claim and is fundamental to why an individual fears persecution, and will be central to the decision that will be made. It is the role of the decision maker to identify which facts are material and which facts are not.

In doing so, decision makers should bear in mind that some facts may be relevant to an assessment of the applicant's credibility even though they are not directly material to the substance of the claim itself. Such facts may be important when the benefit of the doubt is considered, though it is important to avoid confusing them with the facts that relate directly to the claim. They may include, for example, the fact that the applicant has refused to answer questions or the fact that asylum was not claimed until the applicant had been refused leave to enter on other grounds. See [Benefit of the doubt](#) and [Background on Section 8](#) below for guidance.

Examples of material facts include an applicant's membership of a political party, religion or a particular social group, incidences of arrests and periods of detention, locations or episodes of violence at the hands of non-state agents. Decision makers should note that what is important to the applicant may not necessarily be material to the assessment of the claim.

Considering the Material Facts of a Claim

If an applicant has already been subjected to persecution or serious harm, or to direct threats of such persecution or such harm, paragraph 339K of the Immigration Rules makes it clear that a decision maker should regard this as “a serious indication of the person’s well founded fear of persecution or real risk of suffering serious harm, unless there are good reasons, to suggest that such ill-treatment will not be repeated”. Such reasons might include, for example, a significant and enduring improvement in country conditions. Considering past events in the light of present circumstances is therefore an important aspect of assessing any claim.

Having identified the material facts of a claim, decision makers must reach a clear finding on these so that they can accord each fact appropriate weight in considering whether an applicant has substantiated their claim for protection to the required standard of proof. This will require the decision maker to form a view on the extent to which they think each material fact is credible.

Karanakaran

The Court of Appeal in the case of [Karanakaran](#) [(2000) ImmAR271] outlined an approach to assessing evidence of past and present material facts in asylum claims. The Court considered that the proper approach to looking at evidence of past and present events is not to look at these events in terms of standard of proof (so decision makers should not assess whether there is a reasonable degree of likelihood that a past event happened). Instead decision makers must assess whether a past or present event occurred, taking into account all available evidence, and come to a clear conclusion on each material fact.

The Court stated that decision makers should not exclude any past or present events, identified as material to the claim, from consideration when assessing future risk **unless** those events can safely be discarded – i.e. because there is no real doubt they did not occur (or are not occurring). **So to exclude a past event the decision maker must be in no doubt that the event did not happen.**

In practice when reaching findings on material facts decision makers should have in mind the following categories:

- Evidence that they are certain about
- Evidence that they think is probably true
- Evidence that they are willing to attach some credence, even if they could not go as far as to say it is probably true
- Evidence that they are not willing to attach any credence at all

Only material facts to which decision makers are not willing to attach any credence can be safely discarded from the overall consideration of a claim for protection

Decision makers must consider each material fact about the past or present. If the application falls to be refused, they should state in the reasons for refusal letter which elements are accepted or not accepted and why, **before** proceeding to the assessment of a future risk of persecution.

There may be some instances where a decision maker may not be able to conclude, on the evidence available, that a material past or present did or did not occur. In such cases the

uncertainty should be stated as this will show that consideration has been given to the account. In these circumstances decision makers will need to consider whether it is appropriate to apply the benefit of the doubt to the claimed material events (see section on the [Benefit of the doubt](#) below).

Credibility

In assessing the credibility of a claim as a whole, decision makers must assess the credibility of claimed facts about past and present events that go to the core of the claim.

Credibility findings should be focused upon material facts that are serious and significant in nature. It is generally unnecessary, and sometimes counter-productive, for the decision maker to focus upon minor or peripheral facts that are not material to the claim.

Assessing a claim's credibility inevitably involves an element of subjectivity on the decision maker's part. The danger is that a decision maker's subjective interpretation of a claim can lead to unfounded assumptions based not on objective information but on the individual's own experiences and beliefs, undermining the balance and fairness of an assessment. However such subjective decision-making may be minimised by breaking down the assessment of each material claimed fact in the order presented below:

- Internal credibility
- External credibility
- Benefit of the doubt

Internal credibility

Consideration of internal credibility requires the decision maker to assess whether the applicant's material factual claim is internally coherent and consistent with past written and verbal statements, and consistent with claims made by witnesses and/or dependants and with any documentary evidence submitted in support of the claim. It is for the decision maker to assess how well the evidence submitted fits together and whether or not it contradicts itself. Factors to take into account are:

- Level of detail

The level of detail with which an applicant sets out his claims about the past and present is a factor which may influence a decision maker when assessing internal credibility. It is reasonable to assume, subject to mitigating circumstances (see below), that an applicant relating an experience that occurred to them will be more expressive and include sensory details such as what they saw, heard, felt or thought about an event, than someone who has not had this experience.

- Inconsistencies

It is reasonable to assume that an applicant who has experienced an event will be able to recount the central elements in a broadly consistent manner. An applicant's inability to remain consistent throughout his written and oral accounts of past and current events may lead the decision maker not to believe the applicant's claim.

The decision maker must try to ensure that any inconsistencies in the claim are put to the applicant during the interview so that he has an opportunity to explain them.

- **Mitigating circumstances**

In assessing the internal credibility of a claim, decision makers should be aware that there may be mitigating reasons why an applicant is incoherent, inconsistent or delays providing details of material claimed facts. These reasons should be taken into account when considering the credibility of a claim. Such factors may include the following (the list is not exhaustive): mental or emotional trauma, inarticulateness, fear, mistrust of authorities, feelings of shame, painful memories particularly those of a sexual nature.

(For further guidance see the AIs on [Gender Issues in the Asylum Claim](#), [Medical Foundation](#), [Medical Evidence \(Non Medical Foundation Cases\)](#) and [Medical Foundation Policy](#) and [Conducting Asylum Interviews](#)).

External credibility

Material factual claims should be consistent with generally known facts and country of origin information. The decision maker is required to conduct research into the applicant's country of origin to assess whether the material factual claims about past and present events are consistent with objective country information (using, for example, information contained in the [Country of Origin Information Reports](#) produced by the Country of Origin Information Service). At this stage this research is not to assess the likelihood of future persecution but to consider whether the material claimed facts are consistent with reality in the country of origin.

Where there is objective country information to support the applicant's account of a past or present event, and the applicant's account is internally consistent, the material claimed fact may be accepted by the decision maker. However where there is objective country information that clearly contradicts the material claimed fact(s), this is likely to result in a negative credibility finding. Decision-makers should try to put such contradictions to the applicant to allow him an opportunity to account for the discrepancy.

There may be circumstances where it is not possible for a decision maker to put a discrepancy to an applicant. For example, a decision maker may only become aware that the applicant's account is not consistent with available objective country information when checking Country of Origin Information reports after the asylum interview. In these circumstances it may be appropriate to reach a negative credibility finding if there is a contradiction, though care should be taken in using these inconsistencies.

The absence of objective country information to support a material claimed fact does not necessarily mean that an incident did not occur. Much will depend on the scale of the incident, the country situation and the ability of the media or other organisations to report the incident. Decision makers should consider whether to give the benefit of the doubt.

Benefit of the doubt

Where a material claimed fact cannot be corroborated by objective country information or other evidence but appears to be internally credible and the applicant is credible in relation to other material facts, the decision maker should consider giving the applicant the benefit of the doubt and accepting the claimed material fact.

Paragraph 339L of the Immigration Rules describes the circumstances in which the benefit of any doubt should be given to an applicant, when **all** of the following conditions are met:

- the person has made a genuine effort to substantiate his asylum claim or establish that he is a person eligible for humanitarian protection or substantiate his human rights claim
- all material factors at the person's disposal have been submitted, and a satisfactory explanation regarding any lack of relevant material has been given
- the person's statements are found to be coherent and plausible and do not run counter to available specific and general information relevant to the person's case
- the person has made an asylum claim or sought to establish that he is a person eligible for humanitarian protection or made a human rights claim at the earliest possible time, unless the person can demonstrate good reason for not having done so
- the general credibility of the applicant has been established

Plausibility

Assessment of plausibility takes place when decision makers are giving consideration to applying the benefit of the doubt. In order for a particular material claimed fact to be rejected because it is not plausible, it is not enough to simply say that the event could not have happened. Any decision not to apply the benefit of the doubt to a material claimed fact that is otherwise internally credible must be based on reasonably drawn, objectively justifiable, inferences. Decision makers must never make adverse credibility findings by constructing their own theory of how a particular event may have unfolded, or how they think the applicant, or a third party, ought to have behaved. In the case of [Y v Secretary of State](#) [2006] EWCA Civ 1223, the Court of Appeal noted that a decision maker is entitled to regard an account as incredible but must take care not to do so merely because it would not seem plausible if it had happened in the UK. So claims made by an applicant that appear implausible to a decision maker may nonetheless be true, and may be plausible when seen in the context of the attitudes and conditions of applicant's country of origin.

General Credibility

When decision makers are considering giving an applicant the benefit of the doubt much may depend on the applicant's general credibility. Factors affecting an applicant's general credibility include:

- The overall consistency and coherence of the applicant's account and consistency with generally known facts, such as the known situation in the country of origin
- Behaviours indicating that the applicant has ceased to fear returning to his home country - for example, any evidence that the applicant had previously attempted to withdraw his claim for international protection or apply for voluntary return. Again, the applicant should be given the opportunity to account for his actions.

- Immigration history - unless the claimant is a *refugee sur place* - particularly if the applicant has expressly stated that he came to the UK in order to seek protection. Actions that might not be credible include a failure to seek assistance in the first safe country that the applicant came to or a delay in making an application for asylum following arrival in the UK if the applicant is unable to provide an explanation for his actions
- Behaviour that falls within the scope of Section 8 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (and is now included in paragraph 339N of the Immigration Rules). Section 8 designates certain specified behaviours by the applicant that **must** be regarded adversely by decision makers when assessing credibility if the applicant is unable to provide a reasonable explanation for his actions. It is necessary to take Section 8 into account when deciding whether or not to give the applicant the benefit of the doubt.

Section 8 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004

Section 8 of the 2004 Act came into force on 1 January 2005. It provides a framework for the consideration of credibility issues in asylum and human rights applications and imposes an obligation on all deciding authorities (Immigration Officers, the Secretary of State – including decision makers acting on his behalf - and Immigration Judges). In deciding whether or not to believe a statement made by or on behalf of an applicant, these authorities must regard certain specified behaviour as damaging to the credibility of the applicant.

An assessment of credibility will always depend on the full circumstances of the individual case. The fact that Section 8 considerations have the force of law **does not** mean they are to be given more weight than other factors which impact on credibility. A poor immigration history does not, on its own, justify the rejection of a claim without considering the other material claimed facts. The Act does not relieve decision makers of their obligation to give due weight to **all** the facts of the case, including any background information that is available and relevant.

General Requirement

In considering an asylum or human rights claim, there is a general requirement under Section 8(1) to take into account as damaging to the claimant's credibility any behaviour by the claimant that the decision maker thinks is designed or likely to:

- conceal information;
- mislead; or
- obstruct or delay the handling or resolution of the claim.

Specified Types of Behaviour

As well as this general requirement, certain types of behaviour are also listed in Section 8 as behaviour which must always be treated as damaging to the claimant's credibility. These are:

- failure **without reasonable explanation** to produce a passport on request;
- production of a document that is not a valid passport as if it were. **Note:** there is no "reasonable explanation defence" in this case;
- destruction, alteration or disposal of a passport, ticket or other travel document **without reasonable explanation**;
- failure **without reasonable explanation** to answer a question asked by a deciding authority;
- failure to take advantage of a **reasonable opportunity** to make an asylum or human rights claim while in a safe country
- failure to make an asylum or human rights claim until notified of an immigration decision, **unless the claim relies wholly on matters arising after the notification**
- failure to make an asylum or human rights claim before being arrested under an immigration provision, **unless there was no reasonable opportunity to claim before the arrest or the claim relies wholly on matters arising after the arrest.**

For detail on Section 8 see [Background to Section 8](#) below.

The Decision Maker's Finding of Fact

By following the approach above, decision makers should be able to establish the past and present facts of a claim – by assessing the internal and external credibility of each material claimed fact, applying the principle of the benefit of the doubt where appropriate and, in doing so, taking into account any Section 8 considerations. Once these facts have been established, decision makers will then need to consider if there is a future risk of persecution, and if the criteria for refugee status, humanitarian protection or discretionary leave apply to the applicant. (See AI on [Considering the Asylum Claim](#) for detailed guidance).

Background to Section 8 of The Asylum and Immigration (Treatment of Claimants, etc) Act 2004

Consideration of Credibility Under Section 8

A deciding authority is required to take into account any of the behaviours listed under Section 8 when determining whether to believe a statement made by or on behalf of a person who makes an asylum or human rights claim. The first step for decision makers is to consider whether Section 8 applies to an applicant's behaviour. If it does, then it must be taken into account when determining the asylum application. If a claim is refused and Section 8 factors have been taken into consideration, the reasons for refusal letter must explain why the applicant's behaviour is considered as damaging to the applicant's credibility.

The behaviours specified in Section 8 are not exhaustive or determinative. Credibility can be undermined in other ways and, depending on the circumstances, it may be appropriate to refuse on other credibility grounds entirely. On the other hand, the points in the applicant's favour may outweigh the points against, even though the points against include Section 8 points – Section 8 prescribes types of behaviour that damage credibility but not the extent of the damage, which is for the decision maker to decide in the circumstances of each case.

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- production of a document that is not a valid passport as if it were. **Note:** there is no "reasonable explanation defence" in this case;
- destruction, alteration or disposal of a passport, ticket or other travel document **without reasonable explanation**;
- failure **without reasonable explanation** to answer a question asked by a deciding authority;
- failure to take advantage of a **reasonable opportunity** to make an asylum or human rights claim while in a safe country
- failure to make an asylum or human rights claim until notified of an immigration decision, **unless the claim relies wholly on matters arising after the notification**
- failure to make an asylum or human rights claim before being arrested under an immigration provision, **unless there was no reasonable opportunity to claim before the arrest or the claim relies wholly on matters arising after the arrest.**

Passport, Other Travel Documents and Interviews

References to a passport include a document designed to serve the same purpose. Whether a document, such as a ticket, relates to travel will be dependent on the circumstances of the case. A passport is valid for Section 8 purposes if it relates to the person concerned, unless it has been altered unofficially or was obtained by deception. In circumstances where an applicant produces a document but immediately advises an immigration officer that it is false, Section 8 does not apply as the applicant made no attempt to produce the document as if it were valid.

Although the onus is on the applicant to provide a reasonable explanation for failing to produce (or for destroying) a travel document, decision makers will have to assess whether any explanation given is reasonable in all the circumstances of the case. If the applicant gives a reasonable explanation, decision makers must not make negative inferences about the applicant's credibility on this ground.

Similarly, failure by an applicant without reasonable explanation to answer a question posed by a deciding authority must be treated as damaging to the applicant's credibility. An applicant who fails to co-operate should be warned that non-compliance may affect the assessment of the claim. This includes, for example, a failure to address the question asked as well as a refusal to speak at all. But care should be taken to ensure that the failure did not arise from a misunderstanding or a failure by the official to ask appropriate questions. Reasonable steps must be taken to ensure that the applicant understands what is required.

If the claim is refused and the decision maker considers that this provision applies, the reasons for the refusal letter should explain why it does and how it affects the overall assessment of the claim.

What is a 'reasonable explanation'?

The question of what constitutes a reasonable explanation is not one to which it is possible to give an exhaustive answer. What is reasonable in one case may not be reasonable in another, but the following may be reasonable explanations:

- Exceptional situations where the applicant could not easily have disobeyed the instructions of an agent who facilitates immigration into the UK. This may be the case for some unaccompanied minors, the very elderly or for people with mental disabilities.
- Cases where an adult is severely traumatised or where cultural norms may make it difficult for a person to answer questions at interview or to disobey instructions, including instructions about documents and particularly across gender and social class. See the AIs on [Conducting Asylum Interviews](#) for advice on dealing with victims of torture and [Gender Issues in the Asylum Claim](#).
- Situations where a person can show that a document was destroyed or disposed of as a direct result of force, threats or intimidation, e.g. where an individual was forced at knife-point to give a document to someone else.
- Where the document has been lost or stolen and the individual can substantiate such a claim (usually with a police report of the loss/theft).

A reasonable explanation must itself be believable.

Failure to Claim in a Safe Country

An applicant who has had a reasonable opportunity to make an asylum claim in a safe third country is expected to do so. A reasonable opportunity means that the applicant could have approached the authorities at the border or internally, as long as there is no reason to think that the claim would not have been received. Decision makers must consider each case on its merits. For example, it might be thought that someone who spent several weeks in France before coming to the UK must have had a reasonable opportunity to claim there. But this would not be reasonable if the applicant was imprisoned by smugglers throughout that time.

A 'safe country' for the purpose of Section 8 is limited to the states listed in Part 2 of Schedule 3 to the 2004 Act (and changed to include Bulgaria and Romania in the Asylum (First List of Safe Countries) (Amendment) Order 2006). These are the states that currently participate in the Dublin II arrangements:

Austria	Finland	Italy	Poland
Belgium	France	Latvia	Portugal
Bulgaria	Germany	Lithuania	Romania
Republic of	Greece	Luxembourg	Slovak Republic
Cyprus	Hungary	Malta	Slovenia
Czech Republic	Iceland	Netherlands	Spain
Denmark	Ireland	Norway	Sweden
Estonia			

If the country is not on the list then Section 8 will not apply. That does not mean that decision makers cannot take into account a failure to apply for protection elsewhere as damaging to credibility, but they are not obliged to do so under Section 8.

What is a 'reasonable explanation'?

It will be necessary to assess whether or not an opportunity was reasonable for the individual applicant concerned. Age, education, experience, culture and gender are among the things to think about. Most adults might reasonably be expected to find a policeman, for instance, but a small child might not.

If the claim is refused and the decision maker considers that this provision applies, the reasons for the refusal letter should explain why it does and how it affects the overall assessment of the claim.

Claims Triggered by Immigration Decisions

If the claim is made after the applicant is notified of an immigration decision, the deciding authority must regard the applicant's credibility as damaged under Section 8 **unless the claim relies wholly on matters arising after notification**. An immigration decision in this case means one of:

- refusal of leave to enter the UK
- refusal to vary leave to enter or remain in the UK
- a decision to remove a person by way of directions under section 10(1)(a),(b), (ba) or (c) of the Immigration and Asylum Act 1999 or under paragraphs 8 to 12 of Schedule 2 to the Immigration Act 971 (illegal entrants, crewmen, family members and overstayers)
- a decision to make a deportation order
- a decision to take action in relation to a person's extradition from the UK

- a grant of leave to enter or remain in the UK

This provision is aimed primarily at those who use a late claim to block or complicate further action against them. Applicants who wait until they are granted leave before making an asylum or human rights claim are also included, as it is reasonable to expect people with urgent reasons for remaining in the UK to state these at the earliest opportunity. In cases where the provision might be applicable, the applicant must be given the opportunity to explain the timing of the claim.

It should be noted that circumstances do change. This may give a person grounds for claiming that they did not have previously, which is why the provision does not apply where the claim relies wholly on matters arising after the notification of the immigration decision.

Notification

If an asylum claim is made after an individual has been told the result of another claim or application, Section 8 may apply. What matters is how the person was notified and the date on which notification occurred. Under the Immigration (Claimant's Credibility) Regulations 2004, notice may be given:

- orally (including orally by phone) or
- in writing by hand, by fax, by email or by post. For Section 8 purposes, there are no requirements as to the form in which a notice has to be written out.

Notice served upon a representative is to be taken to have been served on the applicant.

Claims Prompted by the Applicant's Arrest

An applicant's credibility must be treated as damaged under Section 8 if the claim is made after the applicant's arrest under an immigration provision **unless** there was no reasonable opportunity to make the claim before the arrest, or the claim relies wholly on matters arising after the arrest.

The arrest must relate to immigration (or extradition) issues. The provisions concerned are:

- sections 28A, 28AA, 28B, 28C and 28CA of the Immigration Act 1971;
- paragraph 17 of Schedule 2 to the 1971 Act;
- section 14 of the 2004 Act; and
- the Extradition Acts 1989 and 2003

If an applicant has been arrested prior to making a claim, decision makers should consider whether they had a reasonable opportunity to make a claim before the arrest. Circumstances may change to give a person grounds for claiming asylum that they did not have before the arrest, which is why the provision does not apply where the claim relies wholly on matters arising after the applicant's arrest.

What is a 'reasonable opportunity'?

An applicant has had a reasonable opportunity to claim asylum before being arrested if they could have approached the authorities at any time after their arrival in the UK. Each case should be considered on its merits. For example someone who is apprehended by the police soon after getting out of a back of a lorry is less likely to have been able to make a claim before arrest than someone who passed through immigration control when arriving in the UK.

Passage of Time

There is no time limit on taking into consideration behaviour under Section 8. However as a general rule the older the behaviour the less weight it should be given in the overall assessment of credibility.

Cases Where Credibility May not be an Issue

In certain types of asylum or human rights cases there may not be a need to make an assessment of credibility when assessing the claim. In these cases Section 8 would not be an issue.

Non-suspensive appeal (NSA) cases

The UK Border Agency will usually leave aside the question of credibility when deciding cases for certification under section 94 of the Nationality, Immigration and Asylum Act 2002. Where credibility is not considered, Section 8 does not apply. Where credibility is an issue, whether the certificate relates to a section 94(4) listed state or a 'case-by-case' consideration, Section 8 must be taken into account.

For further guidance on the treatment of credibility in NSA cases, see the AI on [Certification Under Section 94 of the NIA Act 2002](#).

Further representations (and fresh claims)

In cases where the original claim has been considered and the appeal rights exhausted, further submissions will have to meet the requirements of paragraph 353 to be considered a fresh claim (see the AI on [Further Representations and Fresh Claims](#)). If they do, Section 8 will apply to the consideration of the fresh claim. However Section 8 **does not** apply to further representations that do not amount to a fresh claim. Applicants requesting further leave following a period of humanitarian protection or discretionary leave (or exceptional leave) may, or may not, make fresh asylum or human rights claims in tandem with their further leave applications.

Cases in which no substantive asylum interview is conducted

The UK Border Agency may not conduct a full asylum interview with some applicants, such as some unaccompanied minors (e.g. those under 12 years old) or those who have been severely traumatised. In these cases credibility is still likely to be an issue and will need to be considered carefully. The credibility of someone who is not interviewed substantively should not be accepted without question although it may be appropriate to attach less weight to the behaviour concerned if the applicant has had no opportunity to explain it. In these cases a preliminary screening interview may have been conducted and this can be used as an aide to assessing the claim but without a substantive interview special considerations apply to the assessment of credibility.

Decision makers should be aware that, where the applicant has been given no opportunity to explain inconsistencies care should be taken about using the inconsistencies to question credibility. Where a full interview is not conducted it may be difficult for an applicant to provide an explanation for their behaviour. If credibility is an important factor, an applicant should be invited to respond to our doubts in writing, if necessary with the help of a responsible adult.

In deciding whether an explanation is reasonable, decision makers should consider the age of the applicant and any evidence that their mental faculties are impaired.

Agents and Representatives

Section 8 contains no explicit provision on whether to take into account the actions of anyone acting as an agent on behalf of the applicant in regard to credibility. This does not prevent the actions of agents from being considered, but decision makers should be careful to distinguish between the credibility of the applicant, which is unlikely to be affected by the independent actions of an agent, and the credibility of the claim, which may be affected. This may seem a fine distinction, but a failure by the agent to respond to specific questions put by the UK Border Agency in relation to the claim and the provision of false evidence by the agent could seriously undermine the credibility of the claim, even though they would not affect the credibility of the applicant if it were shown that the applicant did not know what was being done on his or her behalf.

Document Control

Change Record

Version	Authors	Date	Change Reference
1.0	N.G.	22/3/07	New web style implemented
2.0	S.B	04/11/08	Re-branding only
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