

IMMIGRATION STATUS UNCERTAIN OR UNKNOWN

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Introduction

This instruction is for all cases where the immigration status is unknown or uncertain prior to interview and all cases where the decision has been taken to refuse outright. Prior to conducting an asylum interview the interviewing officer should in the majority of cases be aware of the immigration status of the applicant, be it port, notified illegal entry, De Facto illegal entry or section 10 overstayer. In a minority of cases the immigration standing of the claimant will not be known or ambiguous. This will be more usual in old backlog cases.

Interviewing officers must always ensure that they thoroughly investigate the claimant's method of entry during the substantive interview if how they entered the United Kingdom is not incontrovertible. For further guidance on conducting interviews see Conducting Asylum Interviews.

Why Is Determining the Immigration Status Important?

In all cases where asylum is refused and leave is refused outright the Nationality, Immigration and Asylum Act 2002 confers a right of appeal against the immigration decision as defined in section 82(2). Therefore, asylum officers need to clearly establish the immigration status of the claimant they are dealing with.

In cases where leave is granted, officers will be required to grant either leave to enter or remain so it is always important to ascertain the correct immigration status.

Initial Checks To Determine Whether The Claimant Has Entered The United Kingdom Legally

Officers must check the following documents on every case where the claimant's method of entry is uncertain or unknown for information on how the claimant entered the UK:

- Screening notes, including any port records
- Asylum Interview Record
- Other documentation on file – i.e. passports, visas

In addition, where the claimant says he/she has been given a visa to enter the UK, the asylum officer should complete a Visa Application Form (VAF) check.

In every case, the asylum officer should write a minute on the case file, for the attention of Border Force, stating exactly what checks have been completed, and the outcome of those checks. This will aid operational colleagues in the future in the event that an interview under caution is deemed necessary.

When to Issue A Method Of Entry Questionnaire

If the claimant has **not** been thoroughly probed during his asylum interview regarding their method of entry, and the initial checks are inconclusive so the asylum officer is unable to determine the claimant's immigration status then an Immigration Status Questionnaire should be issued. This will include backlog cases.

The claimant should be sent an Immigration Status Questionnaire (ASL.1944) plus Guidance Notes (ASL.1945) to complete, detailing his/her entry into the UK.

On return of the questionnaire:

- If the claimant provides sufficient information for the officer to determine their immigration status, the claim should be decided in accordance with their immigration status.
- If the claimant does not provide sufficient information regarding their immigration history, or does not return the questionnaire in the required time, they will be assumed to have entered the United Kingdom illegally and should be treated as an illegal entrant. The decision to refuse asylum and to remove them as an illegal entrant will trigger a right of appeal under section 82.

Officer Unable to Determine Immigration Status

If the method of entry has been thoroughly probed at interview, but the Case Owner is still unable to determine the claimant's status, it may not be necessary to issue an Immigration Status Questionnaire. However, the **officer must be able to demonstrate that they fully questioned the claimant regarding their method of entry into the United Kingdom and that all other checks have been carried out** as detailed in initial checks. Asylum Officers should deal with the cases in accordance with the instructions below:

Asylum Cases

Case Owner actions

The Case Owner should minute the file stating what checks have been undertaken and clearly state their name and grade. The minute should also say:

Method of entry was thoroughly investigated at interview, but it is still not possible to determine the claimant's immigration status. The claimant is, therefore, assumed to have entered the United Kingdom illegally.

The Case Owner should continue with the refusal by treating the claimant as an illegal entrant.

Asylum cases dealt with under the Case Resolution Directorate (CRD)

Caseworker actions:

The caseworker should pass the case file, including the interview record and details of other investigations made, to a senior caseworker for them to confirm that every effort has been made to establish the claimant's immigration status.

If the senior caseworker is satisfied that the interview record shows sufficient evidence that the method of entry was thoroughly probed, the senior caseworker should minute the file to confirm this, clearly stating their name and grade. The minute should say:

Method of entry was thoroughly investigated at interview, but it is still not possible to determine the claimant's immigration status. The claimant is, therefore, assumed to have entered the United Kingdom illegally.

Following agreement by the senior caseworker, the caseworker should continue with the refusal by treating the claimant as an illegal entrant.

If the senior caseworker determines that the method of entry was not thoroughly probed by the interviewing officer, they should minute the file to state this and instruct the caseworker to issue an Immigration Status Questionnaire.

Visa Application Form (VAF) checks

If a claimant states that they were issued with a visa to enter the UK, the officer must satisfy himself/herself that this claim is false before assuming that the claimant entered illegally. During the interview, the claimant should be questioned thoroughly about the circumstances of the application, when it was completed, where they went, were they interviewed etc. When the officer has returned to their unit, they can request sight of the Visa Application Form (VAF) from the issuing embassy/consulate. A written request for a copy of the VAF should be faxed to the embassy or consulate from which the claimant says he/she has obtained the visa, enclosing a return fax number.

Requesting a copy of the VAF may result in a delay in making the decision and asylum officers should be mindful of any impending deadlines and discuss with senior officers whether it is appropriate to miss those deadline. However the onus remains on the officer to ensure that they have completed all possible checks to rule out lawful entry before assuming illegal entry.

Document Control

Change Record

Version	Authors	Date	Change Reference
1.0	DD	20/02/07	New web style implemented
2.0	CB	06/11/08	Rebranded