

CERTIFICATION UNDER SECTION 94 OF THE NIA ACT 2002

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1 Introduction

Section 94 of the Nationality, Immigration and Asylum Act 2002 provides a certification process under which there is no in-country appeal right, in certain circumstances, for a claimant making an asylum or human rights claim, i.e. a claim that removal would breach the United Kingdom's obligations under the Refugee Convention or would be a breach of the claimant's ECHR rights. (Section 115 of that Act contained similar provisions relating to appeals under Part IV of the Immigration and Asylum Act 1999, i.e. appeals against immigration decisions made before 1 April 2003.)

This instruction is concerned with the application of section 94 by caseworkers and the certification of claims as clearly unfounded. The possibility of certification may arise either:(a) where the asylum or human rights claim is made by someone entitled to reside in a State listed in section 94(4) (the asylum claim being made at such a time that the State is listed and the states continues to be listed), or (b) where someone is not entitled to reside in such a State, or made a claim for asylum before the State became a designated State. For possible certification in situation (b) – often termed the “case-by-case certification process” – see [case-by-case process](#).

Section 94(4) currently has a list of 24 States. There were 10 States included on the face of the Act – these were the 10 States (Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia) who joined the EU on 1 May 2004. Since that date the entry and stay of nationals of those countries has been governed by the Immigration (European Economic Area) Regulations, and from 1 October 2004 these States were removed from the section 94 list by section 27 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004. On the 1 January 2007 the NSA designated States of Bulgaria and Romania were removed from the section 94 list when they joined the EU. Asylum and human rights claims from nationals of these 12 States are thus no longer subject to section 94. Asylum and human rights claims from residents (but non nationals) of these 12 States may still be subject to section 94, although any certification would be under the case-by-case process (see [case-by-case process](#)).

The 24 States presently on the list have been added subsequent to the 2002 Act gaining Royal Assent in November 2002. Seven were added by an order which took effect on 1 April 2003; seven more were added by an order which took effect on 23 July 2003. India was added by an order which took effect on 15 February 2005. Bangladesh was removed from the list by an order which took effect on 22 April 2005. Mongolia was designated in full on 2 December 2005. Ghana and Nigeria were designated **for men only** (i.e. definition of “men only” as in adult males, and are not obliged to certify the claim of a male under the age of 18 from one of these designated states) on the same date. Sri Lanka was removed by an order that took effect on 13 December 2006. Ten countries were added to the list on 27 July 2007, six of these in respect of men only.

On 3 June 2006 the Republic of Montenegro formally declared independence from the State Union of Serbia and Montenegro. Serbia, as the successor State to the old State union, remained designated following the dissolution of the old State union (albeit that it continued to be referred to in section 94 as “Serbia and Montenegro”). Given that Montenegro has now been added to the list, the reference to “Serbia and Montenegro” has been omitted and replaced with a reference to “Serbia”.

Claims made by nationals of persons entitled to reside in Serbia (including Kosovo) and claims made by nationals entitled to reside in Montenegro should both be considered under section 94 (3). Claims made by nationals entitled to reside in Montenegro between 3 June 2006 and 27 July 2007, however, must be considered for certification on a case-by-case basis under

section 94 (2). They must not be considered under section 94 (3), as Montenegro was not designated during this period.

Under the provisions of the 2002 Act, asylum or human rights claims from persons who are entitled to reside in one of the listed States are, once refused, to be certified as clearly unfounded, unless the Secretary of State is satisfied that they are not clearly unfounded. The 24 States are:

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

1.1 Full or Partial Designation

There is the power to designate:

- all of a State
- a geographical part of a State
- a State in respect of a “description of person”
- a geographical part of a State in respect of a “description of person”.

The ability to designate a State in respect of a “description of person” was introduced on 1 October 2004 by section 27 of the 2004 Act. The term “description of person” refers to a group of people who may be defined by:

- gender
- language
- race
- religion
- nationality
- membership of a social or other group
- political opinion, or
- any other attribute or circumstance that the Secretary of State thinks appropriate.

Where a geographical part of a State has been designated, residents of parts of that State that have not been designated will, if entitled to reside in the designated part, come within the designated list provisions of section 94. Where a State was designated in respect of a “description of person” a person would need to be both a resident of that State and within the defined group to have their claim considered under the designated list provisions rather than the case-by-case process.

Of the 24 States presently on the list 16 have been designated in full. 8 States, as listed above, have been designated for males only.

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2 Key Points

The following general points should be noted:

2.1 Consideration of Individual Merits

- **An asylum or human rights claim made by a claimant from one of the listed States should be considered on its individual merits.** It is only if a claim falls to be refused that the question of certification arises. **Subject to the section, [When Not To Certify a Clearly Unfounded Claim](#), a claim should be certified as clearly unfounded unless on the facts of the case the decision maker is satisfied that the claim is not clearly unfounded.**

2.2 Legal Definition of Clearly Unfounded

- In its October 2002 judgment in *Thangarasa and Yogathas* the House of Lords confirmed the following two points about a manifestly unfounded claim (which can be taken to apply equally to a clearly unfounded claim):
 - **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 the view that there is nothing of substance in it.**
- The Court of Appeal gave further guidance in the 2003 case of *ZL and VL v SSHD* on certifying a case as clearly unfounded. It said that the approach for the decision maker to take is as follows;
 - (i) consider the factual substance and detail of the claim
 - (ii) consider how it stands with the known background data
 - (iii) consider in the round whether it is capable of belief
 - (iv) consider whether some part of it is capable of belief
 - (v) consider whether, if eventually believed in whole or in part, it is capable of coming within the Convention

If the answers are such that the claim cannot on any legitimate view succeed, then the claim is clearly unfounded. But if on at least one legitimate view of the facts or the law the claim may succeed, the claim is not clearly unfounded.

This instruction is not intended to provide an exhaustive definition of what is or is not a “clearly unfounded” asylum or human rights claim. Rather, it sets out categories of claim which would meet the “clearly unfounded” definition and which one might expect to arise.

2.3 Country Information

It is crucial that each claim be considered with reference to the relevant country information and in particular with reference to the relevant Operational Guidance Note (OGN). The OGN and the Country of Origin Information, together with the contents of the individual claim, will help to identify whether that claim falls within one or more of the general “clearly unfounded” categories set out in the section [Categories of Clearly Unfounded Claims](#).

2.4 Entitlement to Residence

The provisions in section 94 of the 2002 Act concerning listed States relate to persons who are **entitled to reside** in one of those States. For further information see the [Miscellaneous Issues](#) section.

2.5 NSA Caseworker Accreditation

Only caseworkers (including senior caseworkers) and Case Owners who have received the training on non-suspensive appeals certification may take a decision to certify a claim. All decisions to certify a claim under section 94 will be subject to a second pair of eyes.

2.6 General Approach to Certification

- Where a person entitled to reside in one of the listed States makes an unsuccessful asylum or human rights claim, that claim must be certified unless we are satisfied that the claim is not clearly unfounded. This is subject to section 3. This applies to all claims made on or after the date the country was designated. Claims made prior to the date of designation can however be considered for certification on a case by case basis (see section 6).
- If a claimant does not make an explicit human rights claim but their asylum claim raises a fear of mistreatment in their country that claim should be treated as an implied human rights claim (Article 3 ECHR), even if we consider the fear of mistreatment to be objectively unfounded. If the asylum claim is refused, the implied human rights claim should be addressed in the refusal letter and, if it is also refused, both claims should be certified unless the caseworker is satisfied that they are not clearly unfounded.
- **Where both an asylum and a human rights claim (whether explicit or implied) have been made, they should be considered separately for certification.** The refusal should identify the reason or reasons for the asylum claim and human rights claim being refused. The reasons given for refusing the asylum and the human rights claims will normally be sufficient to show why those respective claims are also being certified as clearly unfounded.

2.7 Victims of trafficking

From 1st April 2009, the UK has been bound by the Council of Europe Convention on action against trafficking in human beings. Decisions on asylum or human rights claims from individuals who claim to have been trafficked may be certified under section 94. This is regardless of whether the UK Border Agency has accepted that the individual has been trafficked. As with all decisions and certificates, there must be a case by case assessment of the evidence presented, and a section 94 certificate applied only if the claim is clearly unfounded.

3 When Not to Certify a Clearly Unfounded Claim

Certification of an asylum or human rights claim should be undertaken only where its effect would be to take away an in-country appeal right which would exist but for that certification. There are thus a number of situations where an asylum and/or human rights claim should **not** be certified even though it is clearly unfounded. Details are given below of situations where certification is not appropriate (some of these are affected by changes to in country appeal rights, also set out below, arising out of the 2004 Act with effect from 1 October 2004). The situations are where:

- an individual makes an asylum claim and a human rights claim only one of which is clearly unfounded. In such a case an in country appeal right would normally be generated by the claim which was not clearly unfounded, so there would be no purpose in certifying the claim which was clearly unfounded.
- there is no right of appeal following refusal of the asylum or human rights claim – for example, where the asylum claim is refused and leave of 12 months or less is granted on another basis. Therefore, if you certified the claims under section 94 you would be certifying a right of appeal which does not exist;
- there is a right of appeal but it is under section 83 of the 2002 Act (not section 82) – that is, where the asylum claim is refused and leave of over 12 months (either singularly or cumulatively) is granted on another basis. (Certification does not bite on s83 appeals.);
- there is a right of appeal under section 82 but an individual is entitled to an in-country appeal right for reasons unconnected with the fact that their application comprises an asylum and/or human rights element. **The circumstances under which a person with a clearly unfounded asylum or human rights claim has an in country right of appeal by virtue of section 82/92 of the 2002 Act have been limited since 1 October 2004 as a result of section 27 of the 2004 Act (see below).**

An in-country appeal right still exists (and hence certification is inappropriate) where a person's indefinite leave is revoked under powers in section 76 of the 2002 Act (section 82(2)(f) of the 2002 Act) or where there is a decision to make a deportation order under section 5(1) of the 1971 Act (section 82(2)(j)). However, where someone makes an in-time application for their leave to be varied and our decision is to refuse to vary it (as a result of which the person has no leave) (section 82(2)(d)) or where we curtail leave such that no leave is left (section 82(2)(e)) that decision will not confer an in-country right of appeal where the application involves an asylum or human rights claim which has been certified to be clearly unfounded **(hence certification of clearly unfounded claims is now appropriate in these circumstances)**. (Refusal of a certificate of entitlement under section 10 of the 2002 Act (section 82(2)(c)) will also not generate an in country appeal where combined with a clearly unfounded asylum or human rights claim.

3.0.1 Note 1

Consideration to certifying an asylum or human rights claim in cases where an immigration decision of the type described in section 82(2)(c), (d) or (e) of the 2002 Act is being taken – i.e. decisions whose appeal rights are affected by the 2004 Act - should be given only where the claim is made on or after 1 October 2004. (If a person makes asylum and human rights claims on separate dates, both will need to have been made on or after 1 October 2004 for certification to be considered in conjunction with section 27 of the 2004 Act.) Certification would not be appropriate in relation to claims before that date even where the corresponding immigration decision was on or after 1 October 2004.

3.0.2 Note 2

Where an asylum or human rights claim (made on or after 1 October 2004) is certified as clearly unfounded when making an immigration decision of the type described in section 82(2)(d) or (e) an immigration decision of the type described in section 82(2)(g) should also normally be taken, namely a decision that a person is to be removed from the UK by way of directions under section 10 of the 1999 Act. See also the Asylum Instruction on [Curtailment](#) when taking a section 82(2)(e) decision.

Another consequence of section 28 of the 2004 Act is that a person holding an entry clearance will not generally benefit from an in-country appeal right where leave to enter is refused on the basis that leave is sought for a purpose other than that specified in the entry clearance. Thus, for example, a person holding a visit entry clearance who on arrival seeks entry on the basis of asylum rather than as a visitor would not get an in-country appeal right if the asylum claim was certified to be clearly unfounded. **Certification of a clearly unfounded asylum or human rights claim should thus be considered in such a case provided the claim is made on or after 1 October 2004;**

3.1 Extradition Cases

Section 27 of the 2004 Act disapplies the mandatory requirement to certify an asylum or human rights claim from a resident of a designated State where the claimant is subject to extradition proceedings (a full definition of extradition proceedings is set out in section 94(6A) of the 2002 Act, as inserted by section 27(7) of the 2004 Act). It does not, as a matter of law, prevent the certification of a clearly unfounded claim made by either a resident of a designated State or a resident of another State, but the normal position would be not to certify such a claim. The rationale being that a person who may be extradited to face criminal charges in another country should normally be able to exercise an in-country appeal against the refusal of their asylum or human rights claim.

4 Categories of Clearly Unfounded Claims

Asylum and Article 3 Human Rights Claims

Asylum claims and human rights claims based on Article 3 of the ECHR will normally be based on the same set of factual circumstances. It will normally be the case that if the asylum claim is clearly unfounded so too will be the Article 3 claim, and similarly if the asylum claim is not clearly unfounded nor normally will be the Article 3 claim. Section 4(b) below mentions the main exception to this general principle.

4.0.1 No fear of mistreatment expressed

A claim which raises nothing that could be construed as amounting to an expression of a fear of mistreatment upon return. For example, a person says they are seeking asylum but gives as their reason that they are fleeing poverty or unemployment.

4.0.2 No objective basis for feared mistreatment

The claim expresses a fear of mistreatment but based on an objective assessment there is no arguable case that the feared mistreatment will arise. This category may sometimes overlap with category (iii) or (iv) below.

The key issue under this heading is whether, taking account of the person's circumstances and the relevant country information (including any relevant case law), it is clear from objective evidence that the feared mistreatment will not arise. Reference should be made to the appropriate OGN and Country of Origin information.

The fact that a person may have faced mistreatment in the past would not preclude a case from falling under this heading provided there was clear objective evidence that no mistreatment would occur if the claimant was returned at the date of the decision. For example, because of a change of circumstances in the country of residence.

4.0.3 Feared mistreatment clearly does not amount to persecution

The claim expresses a fear of mistreatment, but from the objective evidence it is not arguable that the mistreatment, even if it occurred, would amount to persecution or treatment contrary to Article 3.

The threshold for persecution and treatment contrary to Article 3 is a high one. If it is clear that any mistreatment (e.g. discrimination) which a person fears on return would not meet that threshold then the claim is clearly unfounded. That is because, even if we accept fully what the claimant says, that person will not have a well-founded fear of persecution or treatment contrary to Article 3.

The existence of previous mistreatment (whatever its severity) does not preclude the possibility of certification if the treatment now feared would clearly not amount to persecution or treatment contrary to Article 3.

The Country of Origin information and the OGN will normally be crucial to the assessment of certification under this category.

4.0.4 Sufficiency of protection available

The claim expresses a fear of persecution or Article 3 treatment by non-state actors but the State provides a sufficiency of protection against such actions.

The need for international protection (under either the Refugee Convention or the ECHR) arises only where it can be shown that a State is either unable or unwilling to provide that protection itself. So in cases where it is clear that the State is providing the required level of protection any asylum claim or human rights claim will be clearly unfounded because even if the threat from non-state actors exists the need for international protection will not arise.

When assessing the protection provided by the State it is not necessary to show that the State would eliminate all risk to the claimant, but it is necessary to show that the State is able and willing to take effective steps to prevent the persecution or Article 3 mistreatment, for example by operating a legal system for the detection, prosecution and punishment of persecutory acts, and that the claimant has access to such protection. Where the threat comes from rogue public officials (e.g. police officers) the threshold of protection required is higher but a claim will still be clearly unfounded if there is clear evidence that the State is able and willing to provide protection against the action of such officials.

Again, the Country of Origin Information and the OGN will normally be crucial to the assessment of certification under this category.

Caseworkers should bear in mind that even where there has been very serious mistreatment, if there is a sufficiency of protection a claim can still be clearly unfounded. In ZL and VL the Court of Appeal was satisfied that there was a sufficiency of protection in the Czech Republic for a woman who had allegedly been raped by a police officer. "There is no evidence that indicates that the Ministry of the Interior would not have pursued the perpetrator of the rape alleged by ZL, had she reported this."

4.0.5 Internal Relocation

If a person's asylum claim is not clearly unfounded when assessed in relation to their home area, the claim would nevertheless still be clearly unfounded if internal relocation is obviously available. This may apply where the claimant claims to be ill-treated by non-state actors, rogue state agents or where the authorities are not in control of the entire country. If caseworkers are satisfied (having referred to the relevant country information) that a claimant could safely relocate to another part of their country where there is clearly a sufficiency of protection and that it would not be unduly harsh to do so, it will be appropriate to certify the claim as clearly unfounded. Caseworkers must have examined at interview whether there are any factors which would make it unduly harsh for the claimant to internally relocate if the claim is to be certified on that basis.

4.1 Asylum Claim: no Refugee Convention Reason Mentioned

The fears expressed in the claim are clearly unconnected to any of the five Refugee Convention grounds (i.e. race, religion, nationality, membership of a particular social group or political opinion). For example, the claimant fears mistreatment at the hands of their neighbours back home and there is no suggestion that this is anything other than a personal dispute with no Refugee Convention ground engaged.

A human rights claim would not fall to be certified as clearly unfounded on this basis, but may be clearly unfounded for other reasons.

4.2 Non Article 3 Human Rights Claims

No ECHR point raised

The claimant says they are making a human rights claim and perhaps mentions some of the ECHR Articles, but the claim contains nothing which could be construed as raising an issue under the European Convention on Human Rights (ECHR). For example, a person says removal would breach their human rights, but their claim is based solely on the general lack of job prospects in the claimant's country of origin.

4.2.1 ECHR point raised but ECHR not applicable

The claim mentions a human right which the claimant says will be breached if they are removed from the United Kingdom, but the ECHR does not provide protection against the alleged breach. For example, a person claims that removal would breach their human rights (either mentioning Article 4 or making reference to no specific ECHR Articles) as they would have to complete military service, but Article 4(3) of the ECHR excludes military service from

the definition of “forced or compulsory labour”. Unless there is some other aspect to the claim, the claim will be clearly unfounded. If there is some other ECHR-related aspect the claim may still be clearly unfounded on the facts but not on the basis that the ECHR is not applicable.

4.2.2 Feared treatment based on non Article 3 grounds

This section relates to indirect breaches of the ECHR, i.e. where the treatment that is alleged is in breach will occur in the country to which a person is to be removed. Where the claim is that removal would be a direct breach of Article 8 – for example, because it would interfere with family life or because it would violate their physical and moral integrity by interfering with medical treatment they are receiving in the UK – that claim should be addressed as set out in (iv) below.

A claimant might refer to mistreatment other than that under Article 3 – for example, unlawful detention (Article 5 of the ECHR) or unfair trial (Article 6) or restrictions on freedom of expression (Article 10).

A human rights claim of this kind would normally be clearly unfounded (unless it revealed a real risk of unlawful killing contrary to Article 2 or of the carrying out of the death penalty such that a grant of Humanitarian Protection would be appropriate).

However, if the feared treatment arguably amounts to a “flagrant denial” of the non Article 3 ECHR right relied upon, the human rights claim won’t be clearly unfounded. A flagrant denial of a non Article 3 ECHR right will occur where the right in question will be completely denied or nullified in the country to which the person would be removed. Non Article 3 human rights should not be certified where it is arguable that it will be impossible for the claimant to exercise any meaningful aspect of the right in question.

(Please refer to the Asylum Instruction on [Considering Human Rights Claims](#) for further guidance on how to deal with allegations that removal will breach a non Article 3 ECHR right.)

Caseworkers should always consider whether the claimed breach of a non-Article 3 right would occur and, if so, whether it would be a flagrant breach and/or a breach that was sufficiently serious that it amounted to a breach of Article 3 of the ECHR (even where the claimant had not themselves raised Article 3). This is because it would be exceptional for a case to meet the flagrant denial test and amount to a breach of Article 3. Therefore caseworkers should consider Article 3 at this stage, even if it isn’t specifically raised by the claimant, to prevent it from being raised at a later date.

If a claimant demonstrated a real risk that, if removed, they would face a breach of an ECHR right (amounting to a flagrant denial of the right in question if it is not Article 3), a period of leave would normally be granted in accordance with the policies on Humanitarian Protection and Discretionary Leave. If such a case did arise the issue of certifying the human rights claim as clearly unfounded would not arise as the claimant would be granted a period of leave. Full consideration to the individual circumstances of the claim and to the relevant country information will need to be given.

4.2.3 Article 8 claims (alleging direct breach by the UK)

Most human rights claims are based on claims of mistreatment in the country of origin. This includes some Article 8 claims – e.g. gay men may claim their country discriminates against them or persecutes them or a claimant may argue that the feared treatment will amount to an attack on their physical and moral integrity and will therefore breach their Article 8 right to a private life. But Article 8 claims are often based on the argument that removal would breach their right to a family or private life they enjoy in the UK.

Such claims will have to be assessed on their individual merits to see whether they should be refused and, if refused, whether the claim is clearly unfounded. The following types of cases may be suitable for certification as clearly unfounded.

- The claimant claims close family ties in the UK but those ties do not exist (e.g. there is no evidence of the existence of the claimed family members or no evidence that there is a longstanding bond between them and the claimant).
- There are no insurmountable obstacles to the family member(s) in question living with the claimant outside the UK.
- There are no strong reasons why the claimant could not return to their country of origin and seek entry clearance under the Immigration Rules to return to the UK.
- Where it is considered that an Article 8 claim may be suitable for certification as clearly unfounded, please refer to the Asylum Instruction on [Article 8 of the European Convention on Human Rights \(ECHR\)](#) for further guidance.

5 Miscellaneous Issues

Credibility and False Information

The way credibility should be taken into account in considering certification under the 2002 Act was considered by the Court of Appeal in the case of ZL and VL. The Court said:

“Where a claimant’s case does turn on an issue of credibility, the fact that the interviewer does not believe the claimant will not, of itself, justify a finding that the claim is clearly unfounded.....Only where the interviewing officer is satisfied that nobody could believe the claimant’s story will it be appropriate to certify the claim as clearly unfounded on the ground of lack of credibility alone.” (It is our interpretation of the judgment that in the final sentence quoted the reference to nobody believing the claimant’s story should be read as nobody reasonably believing that story.)

It will be a rare case which will be certified on the basis of credibility alone. In the majority of cases, caseworkers will need to be able to certify on the basis that, even accepting the claimant’s account as credible and taking that account at its highest, the claim is bound to fail. The most important thing in approaching credibility/false information issues is that the principle of relying on objective/unarguable information still applies. If we have objective reasons which satisfy us that it is clear that a part of a person’s account is not true we should proceed to consider the claim on the basis that it is not true (i.e. the *Karanakaran* approach). If, taking what is left of the account, the claimant has not shown that the claim is not clearly unfounded, the claim should be certified – not because of doubts about the credibility of the claimant or simply because we have concluded he has provided false evidence, but because we have objectively decided on the basis of information we consider to be arguably true that the remainder of the claim is clearly unfounded.

5.1 “Entitled to Reside”

The legislative provisions on the country list apply to persons who are “entitled to reside” in one of the listed States. The term “entitled to reside” is intended to capture, in addition to citizens of those States, people who, although not citizens are ordinarily resident there and have a clear legal basis to reside in that State. The term should not, however, be taken to include short stay residents of one of those countries – for example, visitors or students.

As explained in the introduction, an individual entitled to reside in one of the 10 States which joined the EU on 1 May 2004 or Bulgaria and Romania who joined the EU on 1 January 2007 (or indeed one who is entitled to reside in one of the other 14 EU States) but who is not a national of one of them can be subject to the terms of section 94 on a case-by-case basis. Persons who are dual nationals will be covered by the provisions if one of their nationalities and hence entitlements to residence, is of a listed State.

5.2 Doubts about Nationality/Place of Residence

There are two types of situation here. One where a person claims to be a national of a non-listed State and we have doubts about that. Another where a person argues that though living in one of the listed States they are not entitled to reside there.

If a person claims to come from a non-listed State we would have to accept that claim unless we had evidence (e.g. documentary or other credible evidence) that they were in fact from a listed State. If we did have such evidence we should proceed to consider the claim on the basis that they are from a listed State. If not, the claim may be certifiable under the case-by-case certification process. For further details on this subject see Asylum Policy Notice 4/2004 for [NSA Disputed Nationality Cases](#).

If a person claims to be from one of the listed States but not entitled to reside there we should consider whether there is evidence (e.g. a passport or travel document issued by that country or evidence that the person had been living there for many years) that they are in fact entitled

to reside in one of those countries. If there is such reliable evidence we should consider the claim on the basis that they are entitled to reside in one of those States.

5.3 UASC (Unaccompanied Asylum Seeking Children)

UASC are not exempted from the terms of section 94. However, if a UASC has no family to return to and we are not satisfied that adequate reception arrangements and accommodation exist, that child would not be removed. If they cannot be removed and they do not qualify for leave on any more favourable grounds, they should be granted Discretionary Leave in accordance with the policy set out in the Asylum Instruction on [Discretionary Leave](#). Where leave is granted there will be no human rights claim to consider for certification and therefore, in cases where leave is granted, any asylum claim, even if clearly unfounded, should not be certified (see section 3).

5.4 Disputed Minors

The existing approach to disputed minors should be followed. If a person claims to be under 18 but we conclude, in accordance with existing guidelines, that they are not under 18 we should treat their claim as made by an adult.

5.5 Non Compliance

Non compliance is not likely to be a major consideration in respect of most claims, especially for those claimants held at Oakington. Where a person from one of the listed States does not comply their claim should be considered in the same way as other non-compliance cases, i.e. taking a decision based on the available information. This will normally mean that if the claim is refused it should be certified as there would not be any information which would satisfy the decision-maker that the claim was not clearly unfounded.

5.6 Dependants/Dual Claims

Dependants should be advised that they must apply for asylum or human rights at the outset if they have a fear in their own right. If, nevertheless, an erstwhile dependant applies for asylum or human rights after the principal claimant's claim has been certified as clearly unfounded we would need to consider that claim and we would not normally remove the principal claimant pending a decision on that claim. There will be some occasions where family life is not subsisting – for example, where claimants have chosen to live separately before their arrival in the United Kingdom and they have not resumed family life. In such cases, any claim that separate removal would breach Article 8 may be certified as clearly unfounded (applying the test set out in the Article 8 guidance) unless there are exceptional circumstances which mean it would be disproportionate to remove.

Where more than one family member applies in their own right it is possible that the claim of one may be certified as clearly unfounded and the claim of the other refused but not certified. In such a case we should not normally remove the claimant whose claim was certified as clearly unfounded pending the in-country appeal of the family member where, if that appeal succeeds, the claimant whose claim was certified would have a basis to remain in the UK. Removal would, however, normally be appropriate in the type of case described in the previous paragraph or where the claimant whose claim has been certified would have no basis to remain in the UK even if the family member whose appeal is ongoing succeeds in that appeal.

5.7 Families of Mixed Nationality

Some cases may arise where the principal claimant is from one of the listed States but their partner is not. If the partner applies solely as a dependant then the claim of the principal claimant should be considered in the normal way.

If the partner applies in their own right, their claim should be assessed against the country to which they are to be returned, which will normally be the country of residence of the principal claimant unless there is evidence to suggest that the partner is not entitled to reside in that country. That is, we would consider whether removal to that country would be a breach of the ECHR or a breach of the Refugee Convention (taking into account the possibility of indirect *refoulement* to the country of nationality via the country to which we propose to remove them). If it is not possible to consider the claim of the partner against the country of the principal claimant because we are not satisfied that the partner can be returned to that country, the possibility of certifying their claim as clearly unfounded will (unless they are entitled to reside in another listed State) need to be assessed under the [case-by-case process](#). If the claim of the principal claimant is certified as clearly unfounded they should not normally be removed whilst the claim of their partner is decided, including any in-country right of appeal there may be should that claim be refused. Removal would, however, normally be appropriate in the type of case described in the section [Dependants/dual claims](#) .

5.8 Repeat Claims

It is possible in certain circumstances for a repeat claim to be certified under the provisions of section 96 of the 2002 Act such that **no** appeal right (as opposed to no in country appeal right) arises. Where the case is certifiable under section 96 such a certificate should be issued and, where it is, the question of whether to certify that claim as clearly unfounded under section 94 does not arise. Where it is not possible to certify under section 96 a repeat claim from a resident of a designated State, consideration should be given as to whether it falls to be certified under section 94 in accordance with these instructions.

Further details on section 96 can be found in the IDI on [The One Stop Procedure: Warnings and Certificates](#).

5.9 Further Submissions in Cases Where a Section 94 Certificate has been Issued

All representations received following the service of a section 94 certified decision must be treated as further submissions and considered under paragraph 353 of the Immigration Rules, except in cases where a second immigration decision is required (see below).

<http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/postdecisionrepresentations/guidance/further submissions.pdf?view=Binary>). This applies to any applicant with a standing section 94 decision who has not yet been removed (including those certified before the publication of this instruction).

All decisions to reject further submissions and not treat the case as a fresh claim must follow the Further Submissions instruction fully. The application of paragraph 353 and the section 94 certificate must be fully addressed.

This is a change from the former process for dealing with further submissions in section 94 cases, where a specific section 94 procedure applied. The House of Lords case of *ZT (Kosovo)* found by a majority that as drafted, paragraph 353 must be applied to all further submissions in section 94 cases.

Where a second immigration decision is required, however, case owners should not apply paragraph 353 to further submissions. In the case of *BA* and *PE*, the Court of Appeal found that where further submissions have been received raising asylum and/or human rights grounds, and a second immigration decision is necessary, the further submissions will amount to an asylum or human rights claim for the purposes of section 92(4) of the 2002 Act. The

individual will therefore benefit from an in-country Right of Appeal and, as paragraph 353 has no practical effect, it should not be applied. The refusal decision (on the second immigration decision) may instead be certified under section 94 or section 96 of the 2002 Act, if appropriate.

It is unlikely such cases will occur often. Circumstances where a second immigration decision may be required include the following:

- When a section 10 removal decision (section 82(2)(g) of the 2002 Act) is required, and the standing decision is a refusal to vary leave, or a variation of leave, when the result of this decision is that the person has no leave, (sections 82(2)(d) or (e) of the 2002 Act). For example:
 - Individual enters UK on a student visa
 - Individual applies for asylum, is refused, and refusal to vary leave decision is certified under section 94
 - Individual makes further submissions raising asylum and HR grounds
 - Individual is unsuccessful in obtaining leave through further submissions, and a section 10 removal decision is made. The submissions will amount to a claim for the purposes of section 92(4) of the 2002 Act, paragraph 353 should not be applied to these submissions.

- When a refusal to revoke a deportation order decision (section 82(2)(k) of the 2002 Act) is required, following refusal of an asylum or human rights claim. For example:
 - Individual applies for asylum, is refused, and refusal decision is certified under section 94
 - Individual is informed of a decision to make a deportation order against him
 - Individual responds to this decision and raises asylum and human rights grounds
 - Individual's appeal against the decision to make a deportation order is heard, and the judge considers the asylum and human rights grounds, appeal is dismissed on all grounds and deportation order is signed
 - Individual writes to UKBA requesting that his deportation order be revoked, raising asylum and human rights grounds
 - Request to revoke deportation order is refused, and an immigration decision under s82(2)(k) made. The letter requesting revocation of the deportation order will amount to a claim for the purposes of section 92(4) of the 2002 Act, so paragraph 353 should not be applied to these submissions.

In both of these scenarios, consideration may be given to certifying the second immigration decision under section 94 or section 96 of the 2002 Act, if appropriate.

Where a case is certified under section 94 of the 2002 Act in one of these scenarios, the decision letter should state the following: **'These further submissions have not been considered under paragraph 353 of the Immigration Rules. The certification of this claim under section 94 is made further to the judgment of the Court of Appeal in BA (Nigeria) and PE (Cameroon) [2009] EWCA Civ 119 in respect of the meaning of "an asylum claim or human rights claim" in section 92(4)(a) of the 2002 Act.'**

In cases where a second immigration decision is not required, and paragraph 353 will be applied to the further submissions, the following process should be followed:

5.9.1 Submissions Lead to Claim Being Accepted

If the material received as further submissions shows that the asylum/HR claim should be accepted, the certified refusal decision must be withdrawn, and the appropriate grant implemented.

Actions:

- i. Inform the applicant and any legal representative that the certified refusal is being withdrawn;
- ii. Implement the appropriate grant, according to the relevant instruction.

5.9.2 No Fresh Claim

If the paragraph 353 further submissions test shows there to be no fresh claim, the section 94 certificate should *normally* remain in place. (It is possible that in rare cases, an application would have no realistic prospect of success, but not be so wholly absent of merit to be clearly unfounded. In the reverse, a claim cannot be clearly unfounded but have a reasonable prospect of success.)

Actions:

- i. Reject as further representations, according to the Further Submissions instruction (linked above), fully addressing all points raised;
- ii. Assess whether in light of all of the information held, it is right to maintain the section 94 certificate;
- iii. A) Maintain section 94 certificate
 - Add additional paragraph(s) to state that the section 94 certificate is being maintained. This must show consideration that the claim is still, even in light of the further submissions, clearly unfounded.
- B) Withdraw section 94 certificate
 - Add additional paragraph to state that the section 94 certificate is being withdrawn.
 - Consider, in line with the Further Submissions instruction, whether it is appropriate to certify under section 96 of the 2002 Act. If section 96 is appropriate, follow the instructions for implementation in the Further Submissions instruction.
 - If no certificates are appropriate, serve the decision letter, original RFRL, new immigration decision, form AIT-1 and "how to complete AIT-1" leaflet.

5.9.3 Fresh Claim

If the Further Submissions test shows there to be a fresh claim, the section 94 certificate must be withdrawn. (An application with a realistic prospect of success cannot, by definition, be clearly unfounded.) In these circumstances, consideration should be given as to whether certification under section 96 of the 2002 Act is appropriate. For example, this may be appropriate where the individual had a previous right of appeal against, or was previously served with a one-stop notice following a non-asylum immigration decision, and did not raise the same asylum issues they now raise at their second appeal/in response to their second one-stop notice, without reasonable explanation.

For example, this could occur where the second immigration decision (but first asylum decision) could have been certified under section 96 in the first instance, but was instead certified under section 94. It could also occur where it is only the further submissions that could have been raised at the earlier non-asylum appeal leading to certification under section 96, not the substance of the asylum claim in the first instance which led to certification under section 94.

Actions:

- i. Refuse as a fresh claim, according to the Further Submissions instruction (linked above), fully addressing all points raised;

- ii. An additional paragraph must be included to state that the section 94 certificate is being withdrawn.
- iii. Consider, in line with the Further Submissions instruction, whether it is appropriate to certify under section 96 of the 2002 Act.

6 Case-By-Case Process

Section 94 of the 2002 Act enables the Secretary of State to certify an asylum or human rights claim as clearly unfounded even where the claimant is not entitled to reside in one of the listed States. The legal test as to what amounts to a clearly unfounded claim is the same for such cases, and the effect of certification on appeal rights is also the same.

Therefore the preceding sections of this instruction – the key points (section 2), when not to certify a clearly unfounded claim (section 3), categories of clearly unfounded claims (section 4) and the majority of miscellaneous issues (section 5) – apply equally to the consideration of whether a claim from a non listed country falls to be certified.

However, the following points should be noted:

- whereas there is a mandatory requirement to certify a clearly unfounded claim from a resident of a listed State (save where certification will not affect the individual's appeal rights or where there are extradition proceedings), there is a discretion whether to certify a clearly unfounded claim from someone who is not entitled to reside in such a State;
- Operational Guidance Notes (OGNs) provide caseworkers with guidance on how to deal with common categories of claim. Individual OGNs for the non listed States may provide guidance that a common category of claim is appropriate for certification on a case-by-case basis. However individual cases which are not flagged up in this way or are not common categories of claim may still be suitable for case-by-case certification as clearly unfounded after consideration of the facts in the individual case. Particular attention should be paid to OGNs in case-by-case certification, although it should be appreciated there are not OGNs for all the non-listed States. Where a claim from a non listed State is not flagged up in an OGN (or there is no OGN) as of a type which is likely (subject, of course, to individual consideration of the facts) to be clearly unfounded it is still possible to certify it, should the facts support that. But caution should be exercised and a certificate issued only where the facts of the case clearly support this.
- section 5(c) of the instructions covers doubts about nationality. Where we have sufficient doubts that a person is entitled to reside in a listed State we will not be able to consider the asylum or human rights claim in accordance with the designated State procedure. It is still possible that the claim could fall for certification under the case-by-case approach, but only if we found the claim to be clearly unfounded against both the believed and claimed nationality;
- section 5(f) of the instructions covers non compliance. It is also possible that a case made by a claimant who is not a resident of a listed State may fall to be certified where that claimant does not comply – in particular, where the information we have on the basis of the claim indicates it falls within a category identified in an OGN as likely to generate clearly unfounded claims or indicates there is clearly nothing of substance in it. Certification will not be appropriate where the case file does not indicate the basis of the claim.
- the case by case powers should not normally be applied to any claim lodged prior to the date the NSA powers came into force in November 2002. If you have a claim lodged prior to this date that you consider may be suitable for case by case certification you should consult APU, via a senior caseworker.
- Please refer to section [Case-by-case certification](#) for advice on the process for considering claims that may be suitable for certification on a case by case basis.

7 Processes and Procedures Introduction

Handling Cases Suitable for Certification under s94 of the NIA Act within the regional asylum teams

These instructions outline the processes to be followed by Case Owners when considering certification under section 94 of the Nationality, Immigration and Asylum Act 2002. These instructions should be followed by all the asylum teams, including where appropriate the Detained Fast Track. However, where local procedures relating to the handling of applications – such as the process for allocating interviews in Oakington - differ from local practice, local instructions should be followed.

Case Resolution Directorate (CRD) should where practical follow the processes outlined below, but where procedures relating to the handling of applications differ, local practice should be followed; for example, local instructions for interactions between Legacy Casework Teams and Asylum Co-ordination Units should be adhered to.

Any enquiries relating to local processes should be directed in the first instance to a Senior Caseworker, who should contact AOPU as necessary.

8 Responsibility for Handling NSA Casework in the regional asylum teams

As stated in [NSA caseworker accreditation](#) only an NSA trained Case Owner can consider these cases. Case Owners (or caseworkers) should follow the appropriate instructions:

8.1 Case Owner (Not NSA-Trained)

Case Owners who have not received NSA training cannot consider claims from those entitled to reside in NSA designated states. Nor can they consider case-by-case certification for other cases in which an asylum decision is to be made. Where there is not an NSA-trained Case Owner available in the Asylum Team the Team Leader or Senior Caseworker must be informed so that arrangements can be made for the case to be decided by an NSA-trained Case Owner in another Asylum Team.

8.2 Case Owner (NSA-Trained)

Case Owners who have received NSA training can recommend decisions on claims from those entitled to reside in NSA designated states and can recommend certification on a case-by-case basis for other cases in which an asylum decision is to be made

They **cannot** authorise, commonly known as “second pair of eyes”, a case involving an NSA designated state or authorise certification on a case-by-case basis (non designated state).

8.3 Case Owner/SCW (NSA-accredited)

Case Owners and SCWs who have attended NSA LAB training **and** have been NSA accredited can authorise decisions on cases involving NSA designated states (whether certified or not), and can authorise certification of other cases on a case-by-case basis (accredited caseworkers cannot authorise NSA decisions).

8.4 Where There is not an NSA-Accredited Officer Available

Where there is not an NSA-accredited Case Owner /SCW available in the Asylum Team the Team Leader or Senior Caseworker must be informed so that arrangements can be made for the case to be referred to an NSA-accredited Case Owner/ SCW in another Asylum Team. The NSA-trained Case Owner will be expected to provide the “second pair of eyes” with the following information: the interview record, draft RFRL, recommendation minute and any other relevant paperwork available on file. CID records will also need to be updated to reflect this.

8.5 NSA Training and Accreditation Procedures

- NSA training for Case Owners is delivered by NSA-accredited Case Owners/SCWs.
- Accreditation of Case Owners/Senior Caseworkers can only be approved by NSA-accredited Case Owners/ Senior Caseworkers once the NSA-trained Case Owner/SCW has attended the LAB NSA training.

A central record of NSA-trained Case Owners and NSA-accredited Case Owners/Senior Caseworkers is kept by the NSA Team, who must be informed whenever changes occur.

9 Screening for Applicants that are Entitled to Reside in a Designated State

When a person makes an asylum and/or human rights claim(s) at an Asylum Screening Unit (ASU), Local Enforcement Office (LEO) or Port they are screened. Part of the screening process establishes where that person claims to reside. From this and other details gathered, it can be determined whether they may be suitable for detention in a Fast Track location by referral to the Asylum Intake Unit (AIU). Also see the [Fast Track Suitability List](#) which includes the NSA designated States. Where the applicant is from a designated State and is undocumented the appropriate re-documentation forms should be completed by the screening location.

Where the applicant is not deemed suitable for detention, or where there are no suitable detention facilities available, the case will be routed to an appropriate Asylum Team.

The following states are designated:

| Wave 2 | Wave 3 | Wave 4 |
|-------------------------------------|--------------------------|-----------------------------|
| From 1 April 2003 | From 23 July 2003 | From 2 December 2005 |
| Albania (ALB) | Bolivia (BOL) | Ghana (GHA) – men only |
| Jamaica (JAM) | Brazil (BRA) | Mongolia (MNG) |
| Macedonia (MKD) | Ecuador (ECU) | Nigeria (NGA) – men only |
| Moldova (MDA) | South Africa (ZAF) | |
| Serbia (SRB) including Kosovo (KOS) | Ukraine (UKR) | |
| Wave 5 | | |
| From 27 July 2007 | | |
| Bosnia Herzegovina (BIH) | | |
| Gambia (GHA) – men only | | |
| Kenya (KEN) – men only | | |
| Liberia (LBR) – men only | | |
| Malawi (MWI) – men only | | |
| Mali (MLI) – men only | | |
| Mauritius (MUS) | | |
| Montenegro (MNE) | | |
| Peru (PER) | | |
| Sierra Leone (SLE) – men only | | |

The following states were designated until they acceded to the European Union Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia on 1 May 2004 and Bulgaria and Romania on 1 January 2007. See [Applications from nationals of the EEA and EU Accession countries](#) for instruction on handling these claims.

NB Non-nationals entitled to reside in these countries (more commonly from Estonia, Latvia and Lithuania) may be considered under NSA case-by-case procedures.

Bangladesh (originally Wave 3) was removed from the designated list on 22 April 2005.

Montenegro was originally part of Serbia and Montenegro (Wave 2) and on independence from Serbia on 3 June 2006, Montenegro was removed from the list. On 27 July 2007, Montenegro rejoined the list.

Sri Lanka (originally Wave 3) was removed from the designated list on 13 December 2006.

10 The Substantive Interview

The guidance provided below should be read in conjunction with the instruction provided in [Conducting the Asylum Interview](#).

10.1 The Aide-Mémoire

The Aide-Mémoire is to be used only as a guide by interviewing officers conducting substantive asylum interviews.



"Aide Memoir.doc"

10.2 Withdrawal of Asylum and/or Human Rights Claim(s) at Interview

Before the substantive asylum interview begins, the interviewing officer should ask the applicant if he wishes to proceed with his asylum and/or human rights claim(s) using the standard phrasing contained in the Aide-Mémoire. Where the applicant declares that he wishes to withdraw his asylum claim interviewing officers should:

1. Ensure that the 'Declaration of Withdrawal of Asylum Application' is signed by the claimant;



Declaration of Withdrawal of Asylum Application

2. As appropriate, complete re-documentation forms (for further guidance see [Travel Documentation](#));
3. Place the signed 'Declaration of Withdrawal of Asylum Application' on the right hand side of the case file;
4. Flag the 'Declaration of Withdrawal of Asylum Application';
5. Implement removal of applicant (see NAM guidance [chapter16 Enforcement](#))

10.3 Re-Documentation

If the applicant is undocumented and re-documentation forms have not been started, interviewing officers should complete the appropriate re-documentation forms before starting the interview (for further guidance on identifying and re-documenting undocumented applicants see [Travel Documentation](#)). Where re-documentation forms have been completed and placed on file, interviewing officers should check that forms have been completed correctly.

10.4 Invitation for Further Evidence Given During the Substantive Interview

Adult applicants from one of the designated States listed under section 94 of the NIA Act 2002 are not issued with a Statement of Evidence Form (Self-completion) and are therefore allowed five working days (non-detained applicants) or 48 hours (detained applicants) after the interview to submit further evidence or information. Interviewing officers should inform adult applicants of this right at the end of the asylum interview, issuing stock letter ACD.1903 as appropriate.

For further guidance see [Conducting the Asylum Interview](#).

10.5 Claimants who fail to Attend the Asylum Interview

Acceptable reasons for an applicant not to attend their substantive interview are given in [Conducting the Asylum Interview](#). Where the applicant fails to give an acceptable reason and is entitled to reside in one of the designated States listed in section 94 of the NIA Act 2002, officers should take appropriate non-compliance action. Accredited/NSA trained officers should consider all the evidence available to them and, if they are satisfied that the asylum and/or human rights claim(s) should be refused and is clearly unfounded, they should also certify the asylum and/or human rights claim(s) under section 94. For non-compliance cases a recommendation minute still has to be completed and the decision agreed by an accredited second pair of eyes.

Also see Asylum Instruction [Non-compliance](#) for further advice.

11 Post Substantive Interview

Further Representations

Upon receipt of further representations caseworkers should attach them to the case file and ensure that they are fully considered. Any representations made up until service of decision should be considered.

11.1 Assessing the Evidence

See [Considering the Asylum Claim](#)

If a request is made to delay the decision pending provision of a medical report.

See [Medical Evidence](#) and [Considering the Asylum Claim](#).

11.2 Nationality Doubtful

Cases should be treated as 'Nationality Doubtful' when an officer dealing with a claim has reason to doubt that the applicant has the nationality that they say they have. This may arise, for example, where the applicant does not speak the native language or is unable to give details of their claimed country of nationality when asked, or documentary evidence is discovered that indicates the applicant has a different nationality. For further guidance see [Guidance for South African disputed nationality cases](#) and [Nationality Doubtful](#) (currently under review).

12 Assessing the Claim

General Principles

Officers should consider in turn whether a grant of asylum, Humanitarian Protection, Discretionary Leave or outright refusal is appropriate (see [Considering Human Rights claims](#) and [Considering the Asylum Claim](#)). Officers should then action in accordance with the outcomes below.

12.1 Grant of Asylum, Humanitarian Protection or Discretionary Leave

A recommendation minute is required for all proposed decisions on designated State applications which is forwarded to an accredited “second pair of eyes” for consideration and authorisation. If it is agreed that certification is not appropriate then the Case Owner should implement the case in line with standard procedures and where appropriate a suspensive appeal should be given.

NB If the authorising office agrees that certification is not appropriate but disagrees with the recommendation to grant leave, then the recommending officer should implement the recommendation of authorising officer. The authorising officer should discuss with the recommending officer the reason why a grant of leave is not thought to be appropriate.

See [Considering the Asylum Claim](#).

12.2 Outright Refusals

Only once it has been decided that an outright refusal is appropriate should certification under s94 be considered. NSA-trained Case Owners should consider whether the asylum and/or human rights claim(s) is/are ‘clearly unfounded’ and action in accordance with the outcomes below. **Note** that where an applicant has made a joint asylum and human rights claim and it is decided that certification is appropriate, both claims or neither claim should be certified. For example where it is considered that the human rights claim should not be certified then the asylum claim should also not be certified, and vice versa.

12.3 Asylum and/or Human Rights Claim where Certification Under s94 is Considered Appropriate- ‘Clearly Unfounded’

Where the claimant is entitled to reside in one of the designated States listed under section 94 of the NIA Act see [Consideration Process for Designated State Cases](#). Where the claimant is not entitled to reside in one of the designated States see [Case-by-case certification](#).

12.4 Asylum and/or Human Rights Claim where Certification Under s94 is Considered Not Appropriate- Not ‘Clearly Unfounded’

See [Considering the Asylum Claim](#). **NB** These cases still need to be seen and authorised by an accredited “second pair of eyes”

13 Consideration Process for Designated State Cases

When a Case Owner receives a case file they should follow the implementation outline given below:

13.1 Initial Recommendation

The NSA trained or accredited Case Owner should:

- Read through all the information available on file and on CID (see [Considering the Asylum Claim](#));
- Gather and collate any additional evidence needed, including by substantive interview, where appropriate (see [The Substantive Interview](#) and [Considering the Asylum Claim](#));
- Assess the evidence and claim (see [Further Representations](#), [Assessing the Evidence](#) and [Assessing the Claim](#)); and,
- Draft a recommendation minute (ASL.2672) plus suitable RFRL and if applicable grant consideration minute
 - ASL.1956 if certification under section 94 recommended
 - ASL.1000, if non compliance and certification is not recommended
 - ASL.0015, if Humanitarian Protection or Discretionary Leave is to be granted
 - ACD.2376, if leave is to be granted
- Forward the case file to an NSA-accredited Case Owner/Senior Caseworker for “second pair of eyes”.

NB Even where the recommendation is not to certify the decision for an NSA designated state case, the decision must be referred to and authorised by a “second pair of eyes”

13.2 Considering the Initial Recommendation (“Second Pair of Eyes”)

Accredited Case Owner /Senior Caseworker should:

- Consider the recommendation using all available information; file, AIs, OGNs (always use the latest version available from the [Asylum Processes and Guidance website](#)).
- Agree or disagree with the recommendation, this should be clearly minuted in the second part of the recommendation minute (ASL.2672) and signed.
- Where a decision has been made to certify under s94 ensure that the RFRL does not contain any credibility points (unless previously agreed). (The refusal of the asylum claim in the majority of cases will be based on objective country information, on sufficiency of protection and the option of internal relocation);
- Ensure that the appropriate standard paragraphs have been used and tailored;
- Ensure that all relevant human rights articles have been dealt with, and where appropriate certified;
- Where the NSA-accredited officer disagrees with a recommendation from a NSA-trained Case Owner, the view of the NSA-accredited officer takes precedence.
- Where the Case Owner/Senior Caseworker recommending the decision is NSA-accredited, the decision must still be authorised by another NSA-accredited Case Owner/Senior Caseworker.
- The case file should then be passed back to the originator for amendment or for the final version of the RFRL to be completed.

13.3 Case-by-Case Certification

All Case Owners should consider if the case they are considering is suitable for case-by-case certification. OGNs may provide guidance that a common category of claim is appropriate for certification on a case-by-case basis. However not all categories of claims will be listed and not all countries have an OGN so Case Owners should consider the facts in the individual case for its potential suitability for case-by-case certification as clearly unfounded. For further information see Section A-Case-by-case process.

A Case Owner who has not been NSA-trained but is in ownership of case that they believe after considering the claim against the criteria for an unfounded claim could be certified should personally refer the case to NSA accredited Senior Caseworker/Case Owner to review the case. If the case is deemed suitable for certification then the file should be reallocated to a NSA-trained Case Owner who should follow [Actions for Case Owner](#).

13.3.1 Actions for Case Owner:

Where an NSA-trained Case Owner considers that an asylum and/or human rights claim(s) is suitable for case-by-case certification, the Case Owner should complete the actions as for a designated state certification and should minute the file and complete the relevant sections of the case-by-case pro-forma. The pro-forma should be forward to an NSA-accredited Case Owner/ Senior Caseworker within the Asylum Team.

13.3.2 Actions for NSA-accredited Case Owner / Senior Caseworker:

Upon receipt of an asylum and/or human rights claim(s) recommended for case-by-case certification by an NSA-trained Case Owner, the "second pair of eyes" should review the pro forma and discuss with the Case Owner, referring to the file if necessary. Where they consider that certification is possible they should complete the relevant section of the case-by-case pro-forma and, if appropriate, send it to the Assistant Director for the NSA Process for approval.

Once these have been received back the updated pro-forma should be sent to the Assistant Director for the NSA Team for comment on the case.

Where there is agreement that the case should be certified the "second pair of eyes" should clearly minute the file stating that the case is suitable for certification and complete the actions above under [Considering the initial recommendation](#) and return file to the referring officer who should make any recommended changes and complete the RFRL.

Where the Senior Caseworker disagrees with the recommendation, the case file should be clearly minuted and returned to the referring officer for further action under the 'normal' (non-certified) process.

15 Instructional Minute Sheets

Processes for implementing NSA decisions in respect of principal applicants and dependants are set out in the NSA instructional minute sheets:

Decision Making Minute Sheet

ASL.2590 All NSA cases

Decision Service Minute Sheet

ASL.2762 Port cases

ASL.2763 Illegal entrant and out of time after entry

ASL.2764 In time after entry

Where the decision is also being refused under 339M (non-compliance grounds) then the non-compliance refusal checklist (ASL.2900) should be completed and attached to the decision making instructional minute (ASL.2590). If a decision is made not to certify the decision under s94 then the standard non NSA implementation minute should be used.

When using instructional minute sheets, staff must initial each box to indicate where action has been taken and sign and date the minute at the end of their actions.

Case Owners should identify the applicant's immigration status and that of any dependant(s) to establish which documents should be selected and completed. See [Implementing Substantive Decisions](#).

16 Further Guidance

Asylum Instruction:

- [Considering the Asylum Claim](#)
- [Considering Human Rights Claims](#)
- [Disputed age cases \(currently under review\)](#)
- [Handling applications from convicted criminals, persons on remand and detained cases \(currently under review\)](#)
- [Medical Evidence](#)
- [Nationality doubtful cases \(currently under review\)](#)
- [Travel Documentation](#)
- [Victims of Trafficking](#)
- [Internal relocation](#)
- [Non-compliance](#)
- [The One Stop Procedure: Warnings and Certificates.](#)

Asylum Policy Notices:

- [Application of Non Suspensive Appeal \(NSA\) Process to Asylum Seeking Children](#)

17 Glossary

| Term | Meaning |
|-------------|---|
| ASL.1956 | NSA RFRL |
| ASL.1000 | Non compliance RFRL |
| ASL.0015 | Standard RFRL |
| ASL.2900 | Non-compliance checklist |
| ACD.2376 | Grant consideration minute |
| ASL.2672 | 'First pair of eyes' recommendation minute |
| ASL.2673 | 'Second pair of eyes' determination minute |
| ASL.2590 | Minute sheet - NSA decision making |
| ASL.2762 | Minute sheet - NSA decision serving port cases |
| ASL.2763 | Minute sheet - NSA decision serving illegal entrant and out of time after entry |
| ASL.2764 | Minute sheet - NSA decision serving in time after entry |
| ACD.1903 | Invitation to provide further information following asylum interview |
| | |

Document Control

Change Record

| Version | Authors | Date | Change Reference |
|---------|--------------|------------|--|
| 1.0 | G.T (A D) | 27/2/2007 | Merger on API and APM instructions into new format |
| 2.0 | C. C | 28/07/2007 | Wave 5 countries added |
| 3.0 | C.C | 15/08/2007 | Amendment to date Wave 5 countries added |
| 4.0 | C.C | 20/11/2007 | Amendments from males only to men only |
| 4.3 | M.K & G.L | 30/03/2009 | Amendments re. ZT and renumbering. |