

PROCESSING HYBRID APPLICATIONS

Table of Contents

Introduction

Definition of Hybrid Applications

Identifying Hybrid Applications

File Checks

CID Checks

Charging Issues

Application Forms

Where a Prescribed Form is not on File

Target Deadlines

Handling and Considering Hybrid Cases

Types of Case

Applying for Variation of Leave

Where the Non Asylum Application is not one of the Types of Cases Listed/Covered

Non Suspensive Appeal (NSA) Asylum Cases - section 94 Certification of Claims Brought by Applicants from Designated Countries

Case by Case Certification

European Economic Area/European Union Cases

Priority of Consideration

Considering Illegal Entrants

Determining Immigration Status

Other Points to Note - Handling Marriage or Civil Partnership Applications

Determining Rights of Appeal

Implementing Decisions - Outright Refusals

Preparing Implementation Paperwork for Outright Refusals

Decision Letters (Reasons for Refusal Letter)

Decision Notices

Appeal Proforma (PF1)

Updating CID/INDECS

Minute Writing

Implementing Decisions - Grants of Leave

Granting Asylum

Granting Leave on Rules Based Application, HP, DL or LOTR

Preparing Paperwork for Granting Leave

Decision letters

Preparing decision notices

Preparing appeal proformas (PF1)

Endorsement on United Kingdom Residence Permits

Updating CID/Stats codes

Minute Writing

Withdrawal of Asylum or Non Asylum Application

Withdrawal of asylum claim

Withdrawal of 'Rules based' application

Further Guidance

Wordings for Decision Notices

Outright Refusals

Grants of Leave (Asylum Refused)

Example Wordings for Proformas

Decision

Immigration History

Glossary

Introduction

This instruction provides guidance to asylum officers on how to process hybrid asylum casework. Guidance is also provided regarding implementing decisions and determining rights of appeal in hybrid cases and how to proceed in the event that the asylum or non asylum application is withdrawn by the applicant.

Definition of Hybrid Applications

A hybrid case is defined as a case where there is an outstanding asylum claim (at the initial decision stage) or Active Review application, along with an outstanding general casework application.

Where the hybrid case is being handled by ACD and an initial asylum claim is outstanding the case should be considered by asylum decision makers who have attended the necessary hybrid training course and who have been allocated this workstrand.

Where the hybrid case arises within the context of an Active Review application and is being handled by ACD, the case should only be considered by Active Review asylum officers who have attended the necessary hybrid training course.

Identifying Hybrid Applications

Cases can be identified in the following ways:

File Checks

Asylum officers should check a case file to see if there is an outstanding asylum claim and a general casework application. A checklist is available to aid asylum officers to complete basic file checks.

CID Checks

The asylum officer should check G-CID to ensure that there is an outstanding rules-based application.

Asylum officers in ACD who find a hybrid case should forward the case to the relevant location, marked for the attention of the 'hybrid team'.

Charging Issues

Application Forms

In cases where the applicant has made an application that attracts a fee, all payments will be handled by ATOS in Cannock. If the general/Rules based application was made before charging was introduced (1 August 2003) the case will not attract a fee.

If there are any charging issues for example, over or under payment, this will be dealt with by the Charging Support Team in Croydon. Staff in the New Asylum Model (NAM) or the Asylum Casework Directorate (ACD) are not expected to handle any fees.

Where a Prescribed Form is not on File

The asylum officer will need to cross check CID and Warehouse/File Tracking System as some subfiles may have been separated and be located in another area.

If asylum officers in the NAM or ACD receive a general casework application, which post dates the date on which charging was introduced (1 August 2003) and the applicant had extant leave at the time they made the application, they should write to the applicant and ask them to submit the application in the correct form and, if chargeable, to pay the required fee. It should be noted that, although illegal entrants have no leave there is nothing to prevent them from submitting an application, but they will usually fall for automatic refusal (see Handling and Considering Hybrid Cases – Priority of Consideration and Considering Illegal Entrants) for considering illegal entrants). The file should be minuted accordingly, and a decision made on the asylum and/or human rights claim as normal.

Target Deadlines

Where possible, the two month target should be met for making a decision on the case. Managed Migration Directorate (MMD) have a target to deal with most applications within seventy working days, therefore the NAM and ACD's targets are compliant with this. However, it is acknowledged that most cases handled when the applications are first dealt with will have passed both deadlines.

Handling and Considering Hybrid Cases

Types of Case

Hybrid asylum officers are trained to consider the following categories of general/Rules based applications:

- Prospective Student
- Student Nurses and Midwives
- Students
- Dependants of Students
- Fiance(é)s or proposed civil partners
- Marriage or civil partnership
- Unmarried Partners
- Bereaved Spouses and Unmarried partners
- Long Residence
- Work Permits (including ECAA applications)
- Domestic Violence

Consideration of cases should be made in accordance with the relevant hybrid training, handouts issued during the hybrid training and communications issued by the General Group communications team.

In addition to this, hybrid asylum officers will be able to deal with medical cases (as part of the general asylum casework).

Applying for Variation of Leave

Where a person has submitted an in time in country application to vary leave, further grounds for applying to vary leave may subsequently be submitted. An application for leave in a different category made by a person who has continuing leave under section 3C (and an application for further leave outstanding) will be treated as a variation of the original application rather than as a fresh application to vary leave. This ensures that there is only one right of appeal. For example, applicants who submit in-time applications for LTR as a student can subsequently seek leave in a different category e.g as the spouse of a British Citizen. If the spouse application is made after the original leave has expired and section 3C leave is running, it will be treated as a variation of the original application for LTR as a student.

If the applicant makes it absolutely clear that the new basis of the application should be considered **instead** of the original basis, then the original application need not be considered. However, it should **not** be assumed that the applicant wishes to withdraw the original basis for application simply because it appears incompatible with the later grounds, and the general position is that all grounds relied upon should be considered. Using the example above, when considering the application to vary leave, the case owner/caseworker should consider it as both an application for leave as a student and application for leave as a spouse.

Where the Non Asylum Application is not one of the Types of Cases Listed/Covered

Currently, only the cases listed under Types of Cases can be dealt with. If the case contains a different type of general application than those listed above and is being handled by a hybrid asylum officer within the NAM, they should liaise with Managed Migration, ensuring that they provide them with a full overview of the case.

Where the case is being dealt with by a hybrid asylum officer within ACD, the case file should be forwarded to the ACD hybrid SCW for guidance, who will then, if necessary, liaise with Managed Migration on how to proceed. In the event that asylum officers should need to contact the hybrid SCW for guidance, they should provide them with a full overview of the case to enable them to respond to the query quickly and effectively or liaise with Managed Migration as appropriate.

Non Suspensive Appeal (NSA) Asylum Cases - section 94 Certification of Claims Brought by Applicants from Designated Countries

Only NSA accredited asylum officers should certify decisions under section 94 of the Nationality, Immigration and Asylum (NIA) Act 2002. Where an asylum or human rights claim made by an applicant from a designated country is certifiable under section 94, ACD hybrid asylum officers should apply the same procedures used when considering certifying cases on a case by case basis (see Case by case certification).

If the asylum/human rights claim was made before the country was designated, it should be dealt with as a non NSA case, unless it is considered appropriate to certify the claim as clearly unfounded on a case by case basis (see Case by case certification).

Please note that most of the hybrid cases will include backlog asylum claims. Hybrid Asylum officers within the NAM, who are NSA accredited may make a decision to certify under s94 but before implementing the decision should refer the case to an NSA accredited colleague to act as a 'second pair of eyes'.

Case by Case Certification

Decisions to certify clearly unfounded asylum or human rights claims on a case by case basis should only be made by decision makers who are NSA accredited.

Hybrid asylum officers within the NAM should make the decision themselves if NSA accredited, however before implementing the decision should refer the case to a NSA accredited colleague to act as a 'second pair of eyes'.

ACD hybrid asylum officers who are not NSA accredited should refer cases suitable for case by case certification to the country SCW, who will decide whether the asylum element of the claim should be considered by a NSA accredited asylum officer or returned to the hybrid asylum officer for consideration. The hybrid asylum officer should ensure that the file is returned to them in order for the general/Rules based application to be considered.

European Economic Area/European Union Cases

Nationals from the European Economic Area (EEA) or European Union (EU) do not need to apply to UK Border Agency for limited leave to enter/remain the UK, but they may apply for ILR. This should be done in a prescribed form (EEC2) and there is no charge. EEA nationals can also apply for refugee status. For further guidance see Applications from nationals of the EEA and EU accession countries

Priority of Consideration

Although the decision for leave on the various applications should be made at the same time (resulting in only one immigration decision being made), the priority of consideration should follow:

1. Asylum

If the applicant qualifies for asylum they should be granted asylum. If they do not, consideration should then be given to the next category.

2. General/Rules based application.

Even if the applicant is an illegal entrant, or an on entry case, substantive consideration of the case under the Immigration Rules should still be given if the applicant is refused asylum. Illegal entrants will usually fall for automatic refusal as they had no leave or entry clearance at the time of submitting the application (see Considering illegal entrants).

3. Humanitarian Protection

If the applicant qualifies for HP they should be granted HP in line with current policy and processes

4. Discretionary Leave

If the applicant qualifies for DL they should be granted DL in line with current policy and processes. It should be noted that in cases where the applicant has made an application under the marriage or civil partnership Rules, and they do not qualify for leave under the Rules (e.g. if they are an illegal entrant), as the NAM and ACD are bound by the ECHR, hybrid asylum officers should consider whether UK Border Agency would be in breach of Article 8 of the ECHR if the applicant was required to leave the country in order to apply for the appropriate entry clearance.

For further guidance on granting HP and DL see the Asylum Instructions Humanitarian Protection and Discretionary Leave.

Considering Illegal Entrants

As detailed in 'Priority of Consideration' illegal entrants who make a general application will usually fall for automatic refusal as they had no leave or entry clearance at the time of submitting the application. Illegal entrants may only qualify for leave if they make an application under Long Residency and have been resident in the United Kingdom for at least fourteen years prior to the service of any illegal entry papers.

Illegal entrants may also qualify for leave, outside of the immigration rules, if they are married to someone settled here and have lived in this country continuously since their marriage or civil partnership for at least two years prior to the commencement of enforcement action. For further guidance see DP 3/96 Marriage Policy.

Determining Immigration Status

Asylum officers must determine the immigration status of a hybrid case, in the same way that it is done for asylum and Active Review cases. The NAM or ACD will be required to make an immigration decision in accordance with section 82 & 83 of the Nationality, Immigration and Asylum Act 2002. The immigration decision will depend upon the immigration status of the

applicant and each dependant and it is therefore important for the immigration status to be identified.

Other Points to Note - Handling Marriage or Civil Partnership Applications

When processing marriage or civil partnership cases, it should be noted that both the applicant and the sponsor (i.e. spouse or civil partner) will need to be called into UK Border Agency for an interview. The marriage interview questions can be obtained from the Document Generator (ICD.2715 - or ICD.2716 for unmarried partners). The applicant's asylum interview should be carried out first, using the standard SEF Interview. The marriage or civil partnership interview should then follow the asylum interview, with the sponsor, (i.e spouse or civil partner) being interviewed first. Where the applicant has requested the interview to be tape recorded and this has been agreed in accordance with current processes, the interview (both asylum and marriage/civil partnership) should be tape recorded. Please note that a sponsor should not be interviewed if the marriage application pre dates March 2003, as this is when the interviewing of sponsors commenced.

Determining Rights of Appeal

An applicant's right of appeal will depend upon their immigration status and what application they are making. For further guidance, see the Asylum Instruction on Appeals – Rights of Appeal and [Chapter 12 of the IDIs Immigration Directorate Instructions](#)

Implementing Decisions - Outright Refusals

Preparing Implementation Paperwork for Outright Refusals

Once the immigration status has been determined and the asylum officer has made a decision on the application, they should implement the decision.

For outright refusals there is no difference in paperwork which is to be issued to the applicant, therefore the standard implementation minute sheets can be used when dealing with hybrid applications. However hybrid asylum officers should note that the standard RFRL used (ACD.0015) **should be replaced with the hybrid decision letter** (ASL.2533) and use the additional standard wording for the decision notices.

Hybrid asylum officers must ensure detailed consideration minutes are placed on file, outlining each application applied for and why they did not qualify for leave. This will aid the case owners (NAM) or Presenting Officers (ACD), if the decision is appealable.

Section 17 of the Asylum & Immigration (Treatment of Claimants, etc.) Act 2004 gives the Secretary of State the power to retain documents which may facilitate removal. As long as caseworkers are satisfied that an applicant is liable to removal and retention of that applicant's documents may facilitate, the relevant documents should be retained on file and should **not** be returned to the applicant when a decision on their claim is made. This includes, but is not limited to: passports; identity cards; membership cards; birth certificates; school certificates; etc. Where it is clear that a document will not facilitate removal, it should be returned to the applicant.

In the NAM and ACG (S) these documents are to be kept in a clear plastic wallet, available from team support, attached to the right hand side of the file. The file must be clearly flagged with a white "Passport" flag. All documents retained on file should be recorded on A-CID and clearly minuted on the file on a separate minute sheet.

In ACG(N) the documents will be kept in the Valuable Document Bank.

For further guidance on the retention of documents see Asylum Guidance on Document Retention.

Decision Letters (Reasons for Refusal Letter)

In cases where the applicant is being refused leave, the decision letter must contain all the reasons why the asylum/human rights application and application under the rules have been refused. The letter should contain all the grounds for refusal for each application, i.e. in respect of the application under the Rules, which of the requirements of the Immigration Rules have not been met, (e.g. if the person has failed to meet the maintenance and accommodation requirements, or has not provided evidence of employment, has not provided the relevant evidence, this needs to be acknowledged).

More detailed guidance on refusal wordings relating to specific categories can be found in the Immigration Directorate Instructions, Chapter 9 relating to [General Grounds for the Refusal / Cancellation of Entry Clearance, Leave to Enter or the Refusal of Variation of Leave to Enter or Remain.](#)

Hybrid asylum officers should use the hybrid decision letter template (ASL.2533).

Decision Notices

The decision notice must set out the applications made and the paragraph of the Rules under which the application is being refused. It is not necessary to list **all** of the reasons for refusing the application under the Rules as the decision letter will set out all of the reasons. Standard wording for decision notices are contained at Wording for Decision Notices. Asylum officers should insert the wording to the decision notice as directed.

Appeal Proforma (PF1)

Where we are refusing both an asylum and a Rules based application, the PF1 must set out in chronological order the applications made (including applications made under the Rules) and the immigration decision being made. The ACD.1989 should be used. For further guidance see the Asylum Policy Instruction (API) on The PF1.

Updating CID/INDECS

The asylum officer should update both 'A' and 'G' flavours of CID with the relevant case outcomes for each case type.

Minute Writing

Hybrid asylum officers must ensure detailed minutes are placed on file, outlining each application applied for and why they did not qualify for leave. This will aid the case owners/Presenting Officers in refusal cases where a right of appeal exists and is exercised.

Implementing Decisions - Grants of Leave

Granting Asylum

If the applicant qualifies for asylum, asylum officers should use the standard implementation minute sheet for granting asylum. There is no need to produce any additional paperwork as once a decision has been made to grant asylum, the Rules based application need not be considered.

Granting Leave on Rules Based Application, HP, DL or LOTR

- If an applicant has made one or more applications under the rules, and they qualify on each basis (but not asylum), the asylum officer should contact the applicant, before the applications are investigated and find out which applications they wish to pursue.
- Where the applicant qualifies for HP or DL plus the category sought under the Rules, the Rules based application takes precedence over a grant of HP or DL. It should be noted that if someone does not have leave at the time of the application, they will not qualify for a grant of leave under the Rules. However it is possible for someone who has leave outside the rules (i.e. LOTR, HP or DL) to switch *into* Rules based leave, **provided that the Rules for that category of leave allow for switching**.
- Where the person does not qualify for asylum or for a grant of leave under the rules but qualifies for leave under the HP or DL policy, they should be granted leave in accordance with current policy and processes for HP or DL. Asylum officers need to address why the leave under the Rules has not been granted (see Preparing paperwork for granting leave).

Preparing Paperwork for Granting Leave

Decision letters

In cases where the applicant is being refused asylum, the decision letter must contain **all** the reasons for refusing the asylum claim. The decision letter must also set out all the reasons for refusing any unsuccessful applications under the rules, i.e setting out which of the requirements of the Immigration Rules have not been met, (e.g. if the person has failed to meet the maintenance and accommodation requirements, or has not provided evidence of employment, or has not provided any other relevant evidence, this needs to be acknowledged).

More detailed guidance on refusal wordings relating to specific categories can be found in the Immigration Directorate Instructions, Chapter 9 relating to [General Grounds for the Refusal / Cancellation of Entry Clearance, Leave to Enter or the Refusal of Variation of Leave to Enter or Remain](#).

Hybrid asylum officers should use the hybrid decision letter (RFRL) template (ASL.2533).

Preparing decision notices

Where we are refusing both asylum and an application under the Rules but HP or DL is being granted, the decision notice must outline the applications made and the paragraph under the rules under which the applications are being refused. It is not necessary to list **all** of the reasons for refusing the Rules based applications, as the decision letter will set out **all** of the reasons. The decision notice should state that leave has been granted.

Preparing appeal proformas (PF1)

Where we are refusing asylum and a general/Rules based application, but granting leave, the PF1 must outline what applications were made and what decision is being made. If leave is being granted for a period exceeding a year, there is a right of appeal against the refusal of asylum under s.83 of the NIA Act 2002. Hybrid asylum officers should use the PF1 template ACD.1990 and should set out all the applications which were made, including applications made under the rules, in chronological order. For further guidance see the API on The PF1.

Endorsement on United Kingdom Residence Permits

The applicant can only be granted one type of leave and whichever type of leave is being granted must be endorsed on the United Kingdom Residence Permits (UKRP), and the appropriate conditions attached to that UKRP. This will automatically feed from the Vignette Implementation Pro-forma (ICD.2100) printed from CID to the vignette machine.

Updating CID/Stats codes

The asylum officer should update both 'A' and 'G' flavours of CID with the relevant case outcomes for each case type. 'G' CID cases will also require a stats code/outcome.

Minute Writing

Hybrid asylum officers must ensure detailed minutes are placed on file, outlining each application applied for and why they did or did not qualify for leave. This will aid Active Review asylum officers when an application for further leave is made or the case owners/Presenting Officers in cases where the decision attracts a right of appeal.

Withdrawal of Asylum or Non Asylum Application

Withdrawal of asylum claim

In cases where the applicant wishes to withdraw their asylum claim they should be asked to confirm this in writing. A withdrawal pro forma can be found at Applications from nationals of the EEA and EU accession countries (and see Further Guidance).

When the withdrawal has been confirmed in writing, the asylum officer should update the 'A'-CID record with the 'withdrawal' outcome. Depending on the immigration status of the application the case should be forwarded to:

- **On entry cases** - the hybrid asylum officers should consider the general/Rules based applications in the normal way.
- **In time in country or overstayers of less than six months** – this will vary according to when the application was made and whether a fee was paid. If the application was made prior to 01/08/2003 the case should be forwarded to NCC 3. Where the application was made after 01/08/03 and a fee was paid, the case should be sent to ICC Support and where the application was made after 01/08/03 and no fee paid, the case should be sent to NCC 5.

- **Illegal entrants and overstayers of more than six months** - to the relevant regional IS Removal Casework Team (RCT).

Withdrawal of 'Rules based' application

If the applicant wishes to withdraw the general/Rules based application, they must be asked to confirm this in writing. Once this has been received the hybrid asylum officer should update the 'G' CID record with the 'withdrawal' outcome.

The asylum/active review decision can be processed in the normal way and the NAM case owner should consider the case themselves. In ACD, the case should be forwarded by the hybrid asylum officer to ACU1 Team B (South) or ACU 11 (North) to be allocated to other CMUs on a rota basis. For more information see [Immigration Directorates Instructions, Chapter 1, Section 6, Paragraph 9 on Withdrawal of Applications](#).

Further Guidance

Hybrid asylum officers should be alert to any Global emails circulated. These may mention a change in Rules or practices.

Wordings for Decision Notices

Outright Refusals

The following wording should be inserted into decision notices where asylum is being refused:

On **date XXXX (name) applied on your behalf/you applied** for variation of your leave as **CATEGORY**. I have considered whether you should be granted leave in the United Kingdom but you do not meet the requirements of the Immigration Rules for this category and I have refused your application under **insert para**. Full details for this decision are provided in the attached letter.

Positioning of paragraph-

For ACD.1046 - refusal to vary leave to enter/remain - the paragraph should appear as the final paragraph above the Decision Maker's signature.

ACD.1050 - refusal to vary leave to enter/remain and curtailment of existing leave - The paragraph should appear as the third paragraph - before the 'curtailment' paragraph (i.e. the paragraph which begins 'Furthermore, I have decided that you no longer meet the requirements of the Immigration Rules under which you were granted leave.....')

Grants of Leave (Asylum Refused)

The following wording should be inserted into decision notices where asylum is being refused, but leave is being granted:

ACD.1047 granting leave

Refusing Asylum but granting rules based application:

On **date XXXX (name) applied on your behalf/you applied** for variation of your leave as **CATEGORY** which has been granted.

This should appear after the paragraph refusing asylum

Refusing asylum, rules based application but granting under HP or DL

On **date XXXX (name) applied on your behalf/you applied** for variation of your leave as **CATEGORY**. I have considered whether you should be granted leave in the United Kingdom but you do not meet the requirements of the Immigration Rules for this category and I have refused your application under **insert para**. Full details for this decision are provided in the attached letter.

This should appear after the paragraph refusing asylum, and before the paragraph granting leave under HP or DL.

Example Wordings for Proformas

Decision

Example A -

On **date** a decision was made to refuse to grant asylum and to refuse to grant leave on the basis of marriage/civil partnership to a person present and settled in the United Kingdom. On **date** a decision was made to remove from the United Kingdom by way of directions under section 10 of the Immigration and Asylum Act 1999.

Example B -

On **date** a decision was made to refuse to grant asylum and to refuse to grant leave for the purpose of studying in the United Kingdom. On **date** a decision was made to refuse to grant leave to enter the UK

Example C -

On **date** a decision was made to refuse to grant asylum and to refuse to grant leave for the purpose of studying in the United Kingdom. On **date** a decision was made to **refuse to vary leave to enter the United Kingdom**

Immigration History

The full immigration history should be set out chronologically, detailing when the appellant arrived in the UK and under what category of leave they have (if any). The date of the asylum claim as well as when all of the other rules based applications were made should be made.

Document immigration history. DO NOT forget to mention dependants or detention if relevant.

Example A -

The appellant claimed to have arrived in the back of a lorry in the United Kingdom on 1 March 2003 and claimed asylum. On 3 April 2003, the appellant submitted an application for leave to remain on the basis of his marriage/civil partnership to a person present and settled in the UK.

Example B -

The appellant entered the UK, at Heathrow on 1 July 2002, and claimed asylum upon arrival. On **date** the appellant applied for leave in order that she could study.

Example C -

The appellant entered the UK, at Gatwick on 23.02.02. On arrival the appellant was given six months leave to enter as visitors on a condition prohibiting employment. The appellant claimed asylum at ASU on 14.07.03. On 25.09.02 the appellant applied for leave to remain in the UK as a Work Permit holder.

Glossary

Term	Meaning
ASL.2533	Hybrid decision letter
ACD.1989	PF1
ACD.1990	PF1
ICD.2100	Vignette implementation proforma

Document Control

Change Record

Version	Authors	Date	Change Reference
1.0	BF	20/02/2007	New web style implemented
2.0	GT	10/05/2007	Formatting updates
3.0	OM	29/10/2008	Update branding only