



Asylum Application Processes

Canada • European Union • Germany • Italy • Malta
Portugal • Sweden • Turkey • United Kingdom

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Comparative Summary

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This report surveys the asylum application processes, in particular processes involved in determining whether an asylum seeker is in need of international protection, in nine selected jurisdictions, namely, **Canada, Germany, Italy, Malta, Portugal, Sweden, Turkey, the United Kingdom (UK), and the European Union (EU).**

Article 14, paragraph 1 of the Universal Declaration of Human Rights provides that “[e]veryone has the right to seek and to enjoy in other countries asylum from persecution.” This principle has been codified in the Convention Relating to the Status of Refugees (Refugee Convention). The Refugee Convention was adopted on July 28, 1951, and entered into force on April 22, 1954. It has been ratified by 146 state parties, including the jurisdictions surveyed in this report. It defines the term “refugee” as “someone who is unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion.” This definition has been implemented into the respective asylum laws of the surveyed jurisdictions. In some countries, such as **Germany and Portugal**, the right of asylum is also a constitutional right. In general, asylum status is awarded to people who meet the definition of refugee and are already present in the country in which they are seeking protection from persecution.

In March 2022, the EU+ countries, meaning the EU Member States plus Switzerland and Norway, received a total of 82,900 asylum applications—the most since 2016 according to the European Union Agency for Asylum (EUAA).¹ The UN Refugee Agency (UNHCR) reported a similar worldwide trend. In the first months of 2022, more than 100 million people were displaced, including 4.4 million asylum seekers. The number of forcibly displaced people constitutes the highest ever on record.² **Turkey** reportedly hosts the world’s largest population of refugees.

People seeking asylum must prove to the competent authorities that they have a well-founded fear of being persecuted. At what point in the asylum application process this requirement is examined varies from country to country. In **Canada**, it is not required for a referral for a hearing at the Refugee Protection Division of the Immigration and Refugee Board. The **EU** has enacted the Asylum Procedures Directive, which establishes common procedures for granting and withdrawing international protection, meaning refugee status and subsidiary protection. Applicants are required to cooperate with the competent authorities and are entitled to a personal interview to determine their eligibility. The EU Member States surveyed in this report, meaning **Germany, Italy, Malta, Portugal, and Sweden**, are obligated to transpose the EU directive into their national laws and comply with its requirements. Even though the **UK** withdrew from the EU on January 31, 2020, it has transposed a number of EU directives, including the Asylum Procedures Directive, into its national legislation. Likewise, **Turkey’s** laws are largely in line with the EU laws, with the notable exception of the “temporary protection” status.

¹ *Latest Asylum Trends*, EUAA, <https://perma.cc/5UBV-KPH4>.

² *Refugee Statistics. Global Trends At-a-Glance*, UNHCR, <https://perma.cc/2B3Y-5JL6>.

Legal guidance documents and country-of-origin guides aid caseworkers in assessing an asylum application. The EUAA is responsible for supporting EU Member States in applying the EU laws that govern the Common European Asylum System. For this purpose, it has published nonbinding practical guidelines on conducting a personal interview and assessing evidence. National governments have published similar, binding regulations or internal guidance documents for their competent asylum authorities, such as those in **Italy**, **Malta**, **Sweden**, and the **UK**. However, this guidance is not always publicly available and may only be inferred from reports published by nongovernmental organizations, as is the case in **Turkey**. In **Germany**, the internal guidelines are generally confidential, but were made available by charitable organizations and individuals who submitted freedom of information requests to the Federal Office for Migration and Refugees.

In **Portugal**, the fact that the applicant has already been persecuted or directly threatened with persecution, or has suffered or been directly threatened with serious harm, is considered a serious indication of a well-founded fear of being persecuted. **Sweden** generally grants homosexual persons from Ghana asylum status automatically, because the risk to this group is considered inherent, and no additional evidence of persecution is needed. In the **UK**, where documentary or other proof of persecution is not available, authorities may still grant a claim of asylum if, among other criteria, the applicant has made a genuine effort to substantiate the claim. **German** caseworkers are provided with a standard set of questions to determine the eligibility of the applicant and must ask probing questions to clarify the facts presented by the applicant. **Turkey** employs a holistic approach to assessing the application, taking into account the general conditions of the applicant's country of citizenship or former residence, and the personal circumstances of the applicant.

European Union and Member States

European Union

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SUMMARY The European Union (EU) is tasked with establishing a Common European Asylum System (CEAS). With regard to standards for granting refugee status, the EU Asylum Procedures Directive is the most important legislative instrument that has been adopted to achieve this goal. A proposal to replace it with an Asylum Procedure Regulation is pending. The Asylum Procedures Directive establishes common procedures for granting and withdrawing international protection, meaning refugee status and subsidiary protection. Applicants are required to cooperate with the competent authorities and are entitled to a personal interview to determine their eligibility.

The European Union Agency for Asylum is mandated with supporting Member States in applying the EU laws that govern the CEAS. For this purpose, it has published non-binding practical guidelines on conducting the personal interview and assessing evidence, among others, and recommendations on conducting the personal interview remotely during the COVID-19 pandemic.

I. Introduction

The European Union (EU) is tasked with establishing a Common European Asylum System (CEAS).¹ To that end, several legislative instruments have been adopted that establish common procedures, a uniform status for refugees and people that have been awarded subsidiary and temporary protection, criteria and mechanisms for determining which Member State is responsible for considering an asylum application, standards regarding conditions for the reception of applicants for asylum or subsidiary protection, and partnerships and cooperation with third countries.² With regard to standards for granting refugee status, the EU Asylum Procedures Directive is the most important legislative instrument.³ However, as the procedures for granting international protection are still not fully harmonized in the Member States, because the directive leaves discretion to the Member States, the European Commission in 2016 presented a proposal to replace the current directive with a directly applicable Asylum Procedure Regulation.⁴ Because the co-legislators—the European Parliament and the Council of the European Union (Council)—did not reach an agreement on the proposed text, the European

¹ Consolidated Version of the Treaty on the Functioning of the European Union (TFEU), art. 67, para. 2 & art. 78, 2016 O.J. (C 202) 47, <https://perma.cc/432S-DKZ8>.

² TFEU, art. 78, para. 2.

³ Asylum Procedures Directive, 2013 O.J. (L 180) 60, <https://perma.cc/824U-GCTZ>.

⁴ Asylum Procedure Regulation Proposal, COM (2016) 467 final (July 13, 2016), <https://perma.cc/B3BT-RNVD>.

Commission presented an amended proposal in September 2020.⁵ The legislative process is ongoing.⁶

II. Legislative Framework

The EU Asylum Procedures Directive was adopted in 2013, repealing and replacing an earlier directive from 2005 on minimum procedural standards for granting refugee status in the EU.⁷ As mentioned, a proposal to replace it with an Asylum Procedure Regulation is pending. Directives must be transposed into national law by the Member States. They are only binding with regard to the goals that the EU countries must achieve. The means are up to the individual Member States.⁸ The deadline for transposing the Asylum Procedures Directive was July 20, 2015.⁹

The Asylum Procedures Directive establishes common procedures for granting and withdrawing international protection, meaning refugee status and subsidiary protection. In particular, applicants are awarded certain procedural guarantees.¹⁰ For vulnerable persons, such as minors, there are special rules in place.¹¹ Applicants are required to cooperate with the competent authorities.¹² In particular, they must report to the competent authorities or appear before them in person, hand over relevant documents, and inform them of their current place of residence and any changes thereof.¹³ The authorities may also request applicants to submit to a search of their person and items, photograph the applicants, and record their oral statements.¹⁴

With regard to the examination procedure for an asylum application, the directive provides that applicants are entitled to a personal interview.¹⁵ During such an interview, the applicant must be given an “adequate opportunity to present elements needed to substantiate the application . . . includ[ing] the opportunity to give an explanation regarding elements which may be missing and/or any inconsistencies or contradictions in the applicant’s statements.”¹⁶ A report or transcript of the interview must be made and the interview may be recorded.¹⁷ The applicant

⁵ Amended Proposal for an Asylum Procedure Regulation, COM (2020) 611 final (Sept. 23, 2020), <https://perma.cc/DPJ9-CAUD>.

⁶ *Legislative Train Schedule. Reform of the Asylum Procedures Directive*, European Parliament, <https://perma.cc/CDU7-TLWS>.

⁷ Directive 2005/85/EC, 2005 O.J. (L 326) 13, <https://perma.cc/TT5P-AX3P>.

⁸ TFEU, art. 288, para. 3.

⁹ Asylum Procedures Directive, art. 51, para. 1

¹⁰ Id. art. 12.

¹¹ Id. arts. 24, 25.

¹² Id. art. 13, para. 1.

¹³ Id. art. 13, para. 2.

¹⁴ Id.

¹⁵ Id. art. 14.

¹⁶ Id. art. 16.

¹⁷ Id. art. 17, paras. 1, 2.

must be given the chance to review the report or transcript, make comments, and correct any mistakes.¹⁸ Subsequently, the applicant is requested to confirm that the content of the report or the transcript correctly reflects the interview.¹⁹

The interviewer must be competent to take into account any personal or general circumstances, such as cultural origin, gender, sexual orientation, gender identity, or vulnerability. If possible, interviews are to be conducted by a person of the same sex as the applicant if so requested. An interpreter must be present to ensure appropriate communication in the language preferred by the applicant. Furthermore, the interviewer must not wear a military or law enforcement uniform and must conduct interviews with minors in a child-appropriate manner.²⁰

Subject to the applicant's consent, Member States may arrange for a medical examination of the applicant concerning signs that might indicate past persecution or serious harm.²¹

No personal interview is necessary when a positive decision with regard to refugee status may be taken on the basis of the available evidence or when the national authority determines that the applicant is unfit or unable to be interviewed.²² In the latter case, reasonable efforts must be made to allow the applicant to submit further information.²³

III. Practical Guidelines

The European Union Agency for Asylum (EUAA) is mandated with supporting Member States in applying the EU laws that govern the CEAS.²⁴ For this purpose, it has published non-binding practical guidelines on conducting the personal interview to determine whether an asylum applicant qualifies for international protection, among others.²⁵ This practical guide "is intended as a practical checklist and brief guidance to accompany the case officers across the European Union and beyond in their daily work" and "is designed in accordance with the relevant legal requirements and at the same time suggests a practical approach, applicable in the daily work of case officers."²⁶ The guide is divided into three parts, namely a checklist for the structured interview, brief guidance for the checklist, and references to international, EU, and national instruments mentioned within the guidance.²⁷ The personal interview checklist consists of five

¹⁸ Id. art. 17, para. 3.

¹⁹ Id.

²⁰ Id. art. 15.

²¹ Id. art. 18.

²² Id. art. 14, para. 2.

²³ Id. art. 14, para. 3.

²⁴ Regulation (EU) 2021/2303, art. 1, para. 2 & art. 2, 2021 O.J. (L 468) 1, <https://perma.cc/35H6-JWBU>.

²⁵ Id. art. 2, para. 1, letter o; European Asylum Support Office (EASO), *EASO Practical Guide: Personal Interview* (Dec. 2014), <https://perma.cc/3M8C-E3CB>. EASO was established in 2011. In 2021, it was replaced and succeeded by the EUAA. See Regulation (EU) 2021/2303, art. 1, para. 1.

²⁶ *EASO Practical Guide: Personal Interview*, supra note 25, at iii.

²⁷ Id.

parts: preparation for the personal interview (section 1), opening the interview and providing information (section 2), conducting the interview (section 3), substance of the application which needs to be explored, in particular gathering information about fear of persecution and serious harm (section 4), and closing the interview and post-interview actions (section 5).

With regard to exploring the substance of the application, the guide notes that

the case officer should bear in mind that there is a shared duty between the authorities and the applicant to establish the facts of the application. This means, in particular, that during the interview, the case officer should (a) be acquainted with the relevant COI [country of origin] that could help to understand the applicant's situation and confirm or indicate discrepancies with elements of his/her statements (see also the sub-section Consult relevant country of origin information); (b) help the applicant to give a full account of his/her story by asking appropriate questions in an appropriate manner; (c) give the applicant opportunities to clarify any possible inconsistencies (see also the sub-section Opportunity to clarify inconsistencies).²⁸

With regard to determining the applicant's fear of persecution or serious harm, the guide suggests asking the following questions:

- 1) In case of return, what does the applicant think could happen?
- 2) Why does the applicant think it would happen?
- 3) From whom does the applicant fear persecution/serious harm in the event of a return to his/her country of origin?
- 4) Explore reasons for persecution (Article 10 of the QD [Qualification Directive],²⁹ Article 1(A)(2) of the Geneva Convention)
- 5) Follow-up questions regarding the actual or imputed characteristics of the applicant.
- 6) Some issues may need to be raised *ex officio* when the applicant does not mention them him/herself, such as FGM [female genital mutilation] with regard to female applicants from certain countries of origin.³⁰

In addition, the EUAA has published a practical guide on assessing evidence obtained from the applicant, which complements the practical guide on conducting a personal interview.³¹ Furthermore, in light of the COVID-19 pandemic, the EUAA has published recommendations on how to conduct personal interviews remotely.³²

²⁸ Id. at 15.

²⁹ Qualification Directive, 2011 O.J. (L 337) 9, <https://perma.cc/CV85-GTX4>.

³⁰ EASO *Practical Guide: Personal Interview*, supra note 25, at 17 et seq.

³¹ EASO, *EASO Practical Guide: Evidence Assessment* (Mar. 2015), <https://perma.cc/NA6M-P93U>.

³² EASO, *EASO Practical Recommendations on Conducting the Personal Interview Remotely* (May 2020), <https://perma.cc/YRU3-RB59>.

Germany

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SUMMARY The right to asylum is a constitutional right in Germany and granted to everyone who flees political persecution. In addition, Germany has ratified the Geneva Convention Relating to the Status of Refugees of 1951 and is bound by EU asylum law requirements. An asylum seeker is allowed to stay in Germany if he or she is granted political asylum, refugee status, or subsidiary protection, or if the Federal Office for Migration and Refugees declares a deportation prohibition.

The Asylum Act and the Residence Act are the two most important immigration laws in Germany that provide rules for the admission and handling of refugee claims. In order to determine whether a person is entitled to refugee status, an in-person interview is conducted and country-specific resources and experts consulted. To ensure uniform decision-making, case workers are provided with official instructions, internal guidelines on the asylum procedure, and accompanying quality assurance guides.

I. Introduction

The right to asylum is codified in article 16a of the German Basic Law.¹ It is granted to everyone who flees political persecution. In general, only persecution that is perpetrated by the state is relevant.² Political persecution is defined as persecution that causes specific violations of individual rights and, due to its intensity, excludes the individual from the “general peace framework of the state unit.”³ Not every disadvantage or material hardship supports a right to asylum.⁴

In addition, Germany has ratified the Geneva Convention Relating to the Status of Refugees of 1951 (Refugee Convention) and implemented certain European Union (EU) asylum law requirements into German law.⁵ The 2013 EU Asylum Procedures Directive has not yet been transposed, but has direct effect since the deadline for transposition passed on July 20, 2015.⁶ In

¹ Grundgesetz für die Bundesrepublik Deutschland [Grundgesetz] [GG], May 23, 1949, Bundesgesetzblatt [BGBl.] I at 1, as amended, art. 16a, <https://perma.cc/GKX8-72XY> (original), <https://perma.cc/A6BD-SGQS> (English translation, updated through Sept. 29, 2020).

² Bundesverfassungsgericht [BVerfG], 80 Entscheidungen des Bundesverfassungsgerichts [BVerfGE] 315, 334, <https://perma.cc/MR65-NFGF> (original), <https://perma.cc/Y7FF-ZELU> (English summary).

³ Id. at 334 et seq.

⁴ Id. at 335.

⁵ Convention Relating to the Status of Refugees (Refugee Convention), July 28, 1951, 189 U.N.T.S. 137, <https://perma.cc/X8Y6-8NGS>; Directive 2005/85/EC, 2005 O.J. (L 326) 13, <https://perma.cc/TT5P-AX3P>.

⁶ Asylum Procedures Directive, art. 51, para. 1, 2013 O.J. (L 180) 60, <https://perma.cc/824U-GCTZ>; CJEU, Case 148/78, Ratti, 1979 E.C.R. 1629, ECLI:EU:C:1979:110, para. 22, <https://perma.cc/J4NR-TFD9>.

particular, the definition of a refugee codified in article 1(A)(2) of the Refugee Convention and in EU law has been incorporated into section 3 of the German Asylum Act (*Asylgesetz, AsylG*).⁷ It should be noted that German law must be interpreted in line with the requirements set out in the EU directives, in particular with regard to the constitutional right to asylum, which is not equivalent to refugee status.⁸

According to the monthly statistics of the Federal Office for Migration and Refugees (Federal Office) (*Bundesamt für Migration und Flüchtlinge, BAMF*), Germany has received 65,707 asylum applications between January and April 2022, an increase of 15.9% in comparison to the same period the previous year.⁹ In April 2022, 11,359 first-time applications were submitted – an increase of 40.8% compared to April 2021.¹⁰ Most of the applicants in April 2022 came from Syria (3,049 first-time applicants), Afghanistan (2,005), and Iraq (935).¹¹ Overall, 47.1% of the applications have been approved in 2022 so far.¹²

II. Legislative Framework

The Asylum Act and the Residence Act (*Aufenthaltsgesetz, AufenthG*) are the two most important immigration laws in Germany that provide rules for the admission of refugees and the handling of refugee claims.¹³ The Asylum Act codifies the process and consequences of granting and denying asylum, whereas the Residence Act provides rules concerning the entry, stay, exit, and employment of foreigners in general.

An asylum seeker is allowed to stay in Germany if he or she is seeking protection from political persecution or international protection, which includes refugee status and subsidiary protection, or if the competent authority declares a deportation prohibition.¹⁴ If the applicant was the victim of political persecution, he or she may be granted political asylum under article 16a of the Basic Law. Refugee status may be granted for humanitarian reasons, which include the criteria for

⁷ *Asylgesetz [AsylG]*, Sept. 2, 2008, BGBl. I at 1798, as amended, § 3, <https://perma.cc/L2DT-4LUC> (original), <https://perma.cc/47U5-NB87> (English translation, updated through Mar. 1, 2016); Asylum Procedure Directive, art. 2(g) in conjunction with Qualification Directive, art. 2(f), 2011 O.J. (L 337) 9, <https://perma.cc/CV85-GTX4>.

⁸ *Bundesverwaltungsgericht [BVerwG]*, July 7, 2011, docket no. 10 C 26.10, ECLI:DE:BVerwG:2011:070711U10C26.10.0, para. 33, <https://perma.cc/EF8V-3FUV> (original), <https://perma.cc/96QJ-5FUZ> (English translation).

⁹ BAMF, *Aktuelle Zahlen* (Apr. 2022), at 3, <https://perma.cc/UA7T-U3P5>.

¹⁰ *Id.* at 4.

¹¹ *Id.*

¹² *Id.* at 11.

¹³ *Aufenthaltsgesetz [AufenthG]*, Feb. 25, 2008, BGBl. I at 162, as amended, <https://perma.cc/Q7JW-GCRW> (original), <https://perma.cc/NX2X-WFDB> (English translation, updated through Feb. 17, 2020).

¹⁴ *AsylG*, § 13, paras. 1, 2.

political asylum and a broad range of other humanitarian reasons.¹⁵ Persons granted asylum and persons granted international protection enjoy the same legal status.¹⁶

III. Asylum Procedure

After an application has been submitted, the person seeking asylum is invited to an in-person interview.¹⁷ No in-person interview is necessary if the applicant is younger than six years of age or when a positive decision with regard to refugee status can be made on the basis of the available evidence.¹⁸ The Federal Office and charitable organizations offer counselling sessions on the asylum procedure in general and to prepare for the personal interview.¹⁹ In practice, a lot of time can pass between submitting an application and attending the actual in-person interview.²⁰

After an application has been filed, the applicant is informed about his or her rights in a language he or she understands.²¹ It is the duty of the applicant to provide information and proof of persecution or serious harm.²² That includes information on former residences, travel routes, time spent in other countries, and whether a refugee or asylum application has already been initiated or completed in another country or in a different location in Germany.²³ The applicant's statements must be substantiated, not be contradictory, not run counter to the facts relevant to the applicant's case, and not be based on false or falsified evidence.²⁴ The Federal Office must clarify the facts and compile the evidence.²⁵

Personal interviews are not public, but may be attended by representatives of the German Federation, of a German state, or of the United Nations High Commissioner for Refugees.²⁶ The applicant may have an attorney or other non-legal counsel present.²⁷ Other people need

¹⁵ Id. §§ 3a, 3b.

¹⁶ Id. § 2.

¹⁷ Id. §§ 24, 25.

¹⁸ Id. § 24, para. 1, sentences 4-6.

¹⁹ Federal Office for Migration and Refugees, *The Stages of the German Asylum Procedure* 18 (3rd ed. Apr. 2021), <https://perma.cc/LR23-4KEB>. AsylG, § 12a. Please note that § 12a is not included in the English translation of the Asylum Act.

²⁰ Kathrin Böhm, § 17. *Das Asylverfahren*, in *Migrationsrecht in der Beratungspraxis* 682, para. 30, (Thomas Oberhäuser ed., 2019).

²¹ AsylG, § 24, para. 1, sentence 2.

²² Id. § 25, para. 1, sentence 1.

²³ Id. § 25, para. 1, sentence 2.

²⁴ Id. § 30, para. 3, no. 1.

²⁵ Id. § 24, para. 1, sentence 1.

²⁶ Id. § 25, para. 6.

²⁷ Id. § 25, para. 4, sentence 2 in conjunction with *Verwaltungsverfahrensgesetz* [VwVfG], Jan. 23, 2003, BGBl. I at 102, as amended, § 14, <https://perma.cc/H4BG-Z5ZT>.

permission to accompany the applicant.²⁸ The interviewer must be specially trained and may not wear a military or law enforcement uniform.²⁹

A report of the interview is made and is translated back for the applicant. Subsequently, the applicant is requested to confirm that the content of the report correctly reflects the interview.³⁰ A copy is given to the applicant or mailed together with the asylum decision.³¹ The case worker makes a decision on the basis of an overall assessment of all relevant findings, with an emphasis on the personal interview. In making the decision, the case worker may also consult the Federal Office's Asylum and Migration Information Centre and its Migration Info Logistics (MILo) database;³² send individual queries to the German Federal Foreign Office; and obtain language and text analyses, physical-technical document examinations, and medical or other expert advice.³³ The decision on the asylum application is given to the applicant in writing and details the reasoning and the legal options for appeal.³⁴

IV. Practical Guidelines

Case workers at the Federal Office are provided with official instructions and internal guidelines on conducting the personal interview, assessing evidence, and assuring quality, among others. Furthermore, country-of-origin guides are available to assess the facts presented by the applicant.³⁵ The internal guidelines on the asylum procedure are generally not publicly available. However, they have been made publicly available by charitable organizations and individuals that submitted freedom of information requests to the Federal Office.³⁶ The internal guideline on asylum (Dienstanweisung (DA)-Asyl) and the accompanying quality assurance guide for conducting personal interviews (Qualitätsstandards Anhörung) are used by the case workers to ensure uniform decision-making.³⁷

²⁸ AsylG, § 25, para. 6, sentence 3.

²⁹ Id. § 24, para. 1a, sentences 2, 3.

³⁰ Id. § 25, para. 7; Federal Office for Migration and Refugees, *supra* note 19, at 19.

³¹ AsylG, § 25, para. 7.

³² The MILo database contains information on countries of origin, asylum and refugee protection, assisted returns, and immigration/migration. It provides country information and analyses of the Federal Office and other asylum authorities, official information and expert reports, reports by human rights organizations and court decisions. See MILo, BAMF, <https://perma.cc/8RGZ-XNBD>.

³³ Federal Office for Migration and Refugees, *The Decision of the Federal Office* (Nov. 28, 2018), <https://perma.cc/XQQ2-XKG2>.

³⁴ AsylG, § 31.

³⁵ Federal Office for Migration and Refugees, *supra* note 19, at 40.

³⁶ BAMF, *Dienstanweisung Asyl (DA-Asyl)* (Feb. 4, 2022), <https://perma.cc/4CVL-E5Z7>; BAMF, *Handbuch für Entscheider. Teil I. Qualitätsstandards Anhörung* (Aug. 20, 2009), <https://perma.cc/52CX-WAFH>. Please note that the "Handbuch für Entscheider. Teil I. Qualitätsstandards Anhörung" is being revised and not currently in use.

³⁷ Federal Office for Migration and Refugees, *Procedure Management and Quality Assurance* (Nov. 28, 2018), <https://perma.cc/K6DZ-NVJQ>.

The guideline on asylum notes that the case workers must ensure that the personal interview remains confidential and that appropriate rooms are available.³⁸ If there are doubts with regard to the identity of the applicant, the interview should be conducted by particularly experienced case workers and translators.³⁹ Vulnerabilities of the applicant or the wish to be interviewed by a person of the same sex as the applicant must be taken into account, and the interview may be conducted by specially-trained personnel.⁴⁰

Before the interview begins, the case workers must inform translators that they should point out any language inconsistencies that might cast doubt on the information provided by the applicant regarding his or her origin. If no such notice is given during the interview, the case worker must ask about any inconsistencies after the interview has concluded. If language inconsistencies are pointed out, the case worker must follow up and clarify the facts by asking probing questions of the applicant.⁴¹

Case workers are provided with a standard set of questions to determine the eligibility of the applicant.⁴² Some questions may be left out for redundancy if the answer was already provided by the applicant in response to a previous question.⁴³ Some issues may need to be raised *ex officio* when the applicant does not mention them him/herself, such as an independent risk of persecution for minors or female genital mutilation with regard to female applicants from certain countries of origin.⁴⁴

With regard to exploring the substance of the application, the quality assurance handbook suggests the following approach⁴⁵:

- The case worker prompts the applicant to talk about the reasons that establish the applicant's fear of persecution or serious harm and does not interrupt him or her. Notes should be taken and the statements should only subsequently be recorded in the protocol. However, if the exact wording of certain statements is relevant, they must be included verbatim.
- Subsequently, the case worker must try to investigate the presented facts by asking probing questions or asking for more details. Questions and answers should generally be recorded verbatim.
- Contradictions must be clarified by confronting the applicant. Reproaches and answers must be recorded verbatim.

³⁸ DA-Asyl, *supra* note 36, at 77.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.* at 79 et seq.

⁴² Handbuch für Entscheider. Teil I. Qualitätsstandards Anhörung, *supra* note 36, at 22 et seq., annex 2.

⁴³ *Id.* at 7.

⁴⁴ DA-Asyl, *supra* note 36, at 91.

⁴⁵ Handbuch für Entscheider. Teil I. Qualitätsstandards Anhörung, *supra* note 36, at 10.

- If appropriate, additional country-of-origin specific questions should be asked, such as those concerning the applicant's alleged religion, ethnicity, or flight alternatives etc.
- If appropriate, the case worker should ask additional case-dependent questions, such as questions regarding family asylum, women-specific scenarios, trauma, and deportation prohibitions codified in section 60 of the German Residence Act, among others.

Case workers are instructed to clarify the facts, in particular with regard to country-of-origin information, by gathering additional evidence, such as obtaining reports from experts, human rights organizations, or the German Federal Foreign Office; questioning witnesses; or examining official certificates or additional files.⁴⁶

⁴⁶ Id. at 19.

Italy

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SUMMARY The 1951 Refugee Convention has been implemented in Italy since 1954. The Italian Ministry of the Interior has issued guidelines for interviewing refugees applying for international protection in Italy. The guidelines require that petitioners indicate the reasons for leaving their country of origin, their fear of returning to it, and the risks they would face. The guidelines further refer to the possible outcomes of the interview process as determined by the respective territorial commission. Italian legislation also contemplates additional alternative protection status for which petitioners not fulfilling the requirements of the Refugee Convention can apply.

I. General Considerations

A. Legal Framework

Laws concerning the situation of refugees in Italy include the following:

- Law No. 189 of 2002, on Immigration and Asylum,¹
- Decree of the President of the Republic No. 394 of 1999, which implements Legislative Decree No. 286 of 1998,²
- Legislative Decree No. 286 of 1998, containing the general legislation on immigration and the status of foreigners in Italy,³

¹ Legge 30 luglio 2002, n.189, Modifica alla Normativa in materia di Immigrazione e di Asilo [Law No. 189 of July 30, 2002, Amendment to the Legislation on Immigration and Asylum], *Gazzetta Ufficiale della Repubblica Italiana* (G.U.) Aug. 26, 2002, n.199, <https://perma.cc/H4EE-YQ54>.

² Decreto del Presidente della Repubblica 31 agosto 1999, n.394 Regolamento recante Norme di Attuazione del Testo Unico delle Disposizioni concernenti la Disciplina dell'Immigrazione e Norme sulla Condizione dello Straniero, a Norma dell' Articolo 1, comma 6, del Decreto Legislativo 25 luglio 1998, n. 286 [Decree of the President of the Republic No. 394 of Aug. 31, 1999, Regulations on Provisions Implementing the Consolidated Text of Provisions on Immigration and on the Condition of Foreigners According to Article 1, Paragraph 6, of Legislative Decree No. 286 of July 25, 1998] [D.P.R. No. 394], art. 5(7)(b), G.U. Nov. 3, 1999, supp. ordinario n.190, <https://perma.cc/N29C-YFEU>.

³ Decreto Legislativo 25 luglio 1998, n.286 Testo Unico delle Disposizioni concernenti la Disciplina dell'Immigrazione e Norme sulla Condizione dello Straniero [Legislative Decree No. 286 of July 25, 1998, Consolidated Text of the Provisions on Immigration and the Norms on the Status of Foreigners] [D.Lgs. No. 286], G.U. Aug. 18, 1998, n.191, <http://perma.cc/DF6Y-ZFS3>.

- Law No. 91 of 1992 on Citizenship,⁴ and
- Law No. 722 of July 24, 1954,⁵ ratifying the 1951 Refugee Convention.⁶

B. Grounds for Refugee Status Under the Refugee Convention

Under the 1951 Refugee Convention, the grounds on which petitioners can obtain refugee status are based on “a well-founded fear of being persecuted”⁷ in their country of origin for reasons of race, religion, nationality, political opinion or belonging to a specific social group when they cannot receive protection from their home country.⁸

II. The Refugee Interview Process

A. General Aspects of the Interview Process

According to the current practical guidelines provided by the Italian Ministry of the Interior,⁹ the following are the relevant aspects of the refugee interview process:

- The respective territorial commission evaluates applications for international protection.¹⁰
- Petitioners must present themselves to the interview with the territorial commission on the established day and time.¹¹
- The territorial commission will summon petitioners for immediate interviews if they have been convicted of a serious crime or are in detention awaiting repatriation for prosecution on a charge of committing a serious crime. In such cases, if the assessment of a request for international protection is negative, the petitioner must leave Italy even if an appeal of the commission’s decision is pending.¹²

⁴ Legge 5 febbraio 1992, n.91, Nuove norme sulla cittadinanza [Law No. 91 of Feb. 5, 1992, New Norms on Citizenship], G.U. Feb. 15, 1992, n.38, <https://perma.cc/C38Q-8GJV>.

⁵ Legge 24 luglio 1954, n.722 Ratifica ed Esecuzione della Convenzione relativa allo Statuto dei Rifugiati, firmata a Ginevra il 28 luglio 1951 [Law No. 722 of July 24, 1954, Ratification and Execution of the Convention Relating to the Status of Refugees, Signed in Geneva on July 28, 1951], G.U. Aug. 27, 1954, n.196, <https://perma.cc/77HD-244E>.

⁶ Convention Relating to the Status of Refugees, July 28, 1951 (Refugee Convention), 189 U.N.T.S. 137, <https://perma.cc/N995-ZUPD>.

⁷ Refugee Convention art. 1.A.(2).

⁸ Id.

⁹ Ministero dell’Interno, *Guida Pratica per Richiedenti Protezione Internazionale in Italia (Guida Pratica)* [Practical Guide for Applicants for International Protection in Italy (Practical Guide)], <https://perma.cc/WP8Q-2LYS>.

¹⁰ Id. at 23.

¹¹ Id. at 17.

¹² Id. at 18.

- A territorial commission officer carries out the interview. A petitioner can ask to be interviewed by a male or female official or even by the commission's president.¹³
- The interview occurs in the presence of an interpreter of the petitioner's language. The interpreter is an independent and impartial professional who provides a literal translation of the interview, is subject to confidentiality, and does not participate in the evaluation of the case.
- The interview is individual, even if family members are to be interviewed on the same day.¹⁴ In cases where petitioners are 18 years of age or younger, the commission decides whether to interview them directly or to interview their parents or guardians. If a decision is made to interview a minor, the interview occurs in the presence of the minor's parents or guardians.¹⁵
- The guidelines require petitioners to be candid with their interviewers so they can reconstruct their histories, stating clearly instances of lack of knowledge or recollection. Questions during an interview relate to a petitioner's identity (origins, family, culture, studies, work and possibly religion, political ideas), reasons for leaving the country of origin, and the petitioner's "fears about returning to your country of origin and the risks you would run (*timori che hai a tornare nel tuo Paese di origine ed i rischi che correresti*)."¹⁶
- Examples of persecution include "threats to life, torture, slavery, unjust deprivation of liberty, female genital mutilation or a serious violation of basic human rights, or other very serious or repeated violations of your rights."¹⁷
- The interview is video-recorded except when there are technical problems. The minutes are read to the petitioner at the end of the interview for corrections or additions. The minutes are signed by the interviewer and the interpreter; the petitioner is asked to sign only when he or she has made some clarifications. If the interview was not videotaped, the petitioner must also sign the minutes.¹⁸
- The petitioner receives a copy of the minutes to use freely; the commission, in contrast, has an obligation of confidentiality concerning the minutes and may disclose them only with the petitioner's consent.¹⁹

B. Instances in Which the Commission May Proceed Without an Interview

The guidelines specify the following circumstances in which the territorial commission may decide a case without an interview:

¹³ Id. at 23.

¹⁴ Id. at 24.

¹⁵ Id.

¹⁶ Id. at 25.

¹⁷ Id. at 27.

¹⁸ Id. at 24.

¹⁹ Id.

- When the commission determines it has all the elements needed to recognize the petitioner's refugee status;
- When medical documentation demonstrates the petitioner's inability to appear before the commission;
- When it is impossible to locate the petitioner, which triggers a rejection decision; and
- When the petitioner unjustifiably fails to appear for the interview, in which case the commission will decide based on the available documentation.²⁰

III. Rejection of the Petitioner's Request by the Territorial Commission

The commission will reject a request for international protection when there are no legal grounds to grant it. Such a decision may be based on any of a number of circumstances. For example, petitioners' requests may be deemed manifestly groundless because

- there is no persecution in their country of origin,
- the persecution in their country of origin does not affect them,
- they have submitted falsified documents without explaining the reason why, or
- they have refused to register their fingerprints.²¹

The law does not provide for a temporary visa while the territorial commission's decision is pending after the interview has taken place.

Depending on the case, the decision of a territorial commission may be appealed to a judge within 15 or 30 days. The deadline is indicated at the bottom of the commission's decision.²²

IV. Other Types of International Protection

A. Subsidiary Protection

When none of the grounds to grant refugee status is present, petitioners may still obtain "subsidiary protection." This is available if there are reasonable grounds to believe that, upon returning to their country of origin, the petitioners "would actually run the risk of serious harm (death sentence, torture, inhuman or degrading treatment, danger of death because there is an ongoing armed conflict in your country),"²³ and the petitioners would not receive protection by their home country.²⁴

²⁰ Id.

²¹ Id. at 28.

²² Id. at 30.

²³ Id.

²⁴ Id.

B. Special Protection

Additionally, petitioners may be granted special protection if they cannot obtain international protection in Italy but are still at risk of persecution, torture, or other forms of inhuman or degrading treatment in their home country.²⁵

V. Other Resident Permits

Alternatively, instead of submitting a request for recognition of refugee status, petitioners may opt to petition the respective police headquarters for other types of residence permits.²⁶

A. Permits for Medical Treatments

A permit for medical treatment may be granted when a petitioner has a particularly serious health condition (as certified by a public or affiliated health facility) that would cause irreparable damage to the petitioner's health in the event of returning to the home country. This permit is valid exclusively in the Italian territory for the period necessary for treatment (with a maximum duration of one year). Upon expiration, this residence permit is renewable by presenting medical documentation indicating the need to continue treatment. Pregnant women are also entitled to a residence permit for medical treatment valid for up to six months following the birth of their child.²⁷

B. Permits for Disasters

Petitioners who cannot safely return to their country of origin due to a catastrophe such as an earthquake or flood are entitled to a six-month residence permit, valid only in the Italian territory. Upon expiration, this permit can be renewed for another six months only if their country of origin continues to be unsafe due to those conditions. This permit gives petitioners the right to perform work, but it cannot be converted into a permit for work purposes.²⁸

C. Permits for Special Cases

1. Victims of Violence or Serious Exploitation

Victims of violence or serious exploitation may receive a residence permit of six months, renewable for one year. This permit allows petitioners to study, register for employment and work, and obtain assistance services (shelter and psychological and social assistance).²⁹

²⁵ Id.

²⁶ Id. at 37.

²⁷ Id.

²⁸ Id.

²⁹ Id.

2. *Victims of Domestic Violence*

Victims of domestic violence may receive a residence permit of one year that can be converted into a permit for study or work reasons. Permit holders can access shelter and psychological and social assistance.³⁰

3. *Victims of Labor Exploitation*

Victims of labor exploitation may receive a residence permit of six months, renewable for one year or a longer period for any legal requirements, which can be converted into a work permit.

4. *Meritorious Service*

Additionally, a person may obtain a residence permit based on meritorious service, as proposed by the prefect of police and authorized by the minister of the Interior. The permit can be issued to those who have carried out “acts of particular civil value (*atti di particolare valore civile*)” e.g., having saved people in danger, prevented a disaster, carried out actions for the good of humanity, or upheld the name and prestige of Italy. This residence permit has a duration of two years. It is renewable and gives the right to study and work. It can be converted into a permit for work purposes.³¹

³⁰ Id. at 37-38.

³¹ Id. at 38.

Malta

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SUMMARY Malta receives a number of asylum seekers each year and has help from the European Union to process these applicants. The International Protection Act, and subsidiary legislation made under it, provide the operating legislative framework under which these individuals are processed. Interviews are part of the process for those seeking international protection, although they may be waived in certain circumstances. To help reduce the backlog of applications, Malta has introduced an accelerated process that rejects those cases considered prima facie inadmissible or manifestly unfounded, which provides for a review and decision concerning an application within three days. There is no appeals process, but the International Protection Appeals Tribunal automatically reviews decisions made under this system.

I. Introduction

The Republic of Malta consists of six small islands totaling 316 square kilometers located in the Mediterranean Sea between Sicily and Libya. It is one of the most densely populated countries in the world.¹ Malta achieved independence from Britain in 1964 and adopted a constitution that same year.² It became a member of the European Union (EU) on May 1, 2004,³ and adopted the Euro as its currency on January 1, 2008.⁴ Malta has a civil law system. The president of Malta must approve any bill supported by a majority in the Maltese Parliament for it to become law. A president who does not approve a piece of legislation cannot veto it but only resign in protest. Laws become effective when they are published in the government gazette.

While Malta is not considered a “desirable” state by refugees and irregular migrants, many find themselves in Malta after encountering difficulties in the seas nearby while trying to get to mainland Europe. They have been arriving in the country in large numbers since 2002.⁵

Malta is a party to the Refugee Convention of July 28, 1951. Malta, as an EU member, has transposed into its national laws a number of EU directives providing common standards that define who qualifies for international protection and set the procedures for granting and withdrawing international protection.

¹ Home Aff., *Strategy for the Reception of Asylum Seekers and Irregular Migrants* 3, <https://perma.cc/H8PE-YVXB>.

² Constitution of Malta, <https://perma.cc/XPM8-2DSG>.

³ *Malta in the EU*, Eur. Comm’n, <https://perma.cc/9DYN-SQ5B>.

⁴ *Malta and the Euro*, Eur. Comm’n, <https://perma.cc/Y3DC-U65Z>.

⁵ *Strategy for the Reception of Asylum Seekers and Irregular Migrants*, supra note 1, at 2.

Malta received 4,021 applications for asylum in 2019. This dropped by almost half in 2020 to 2,419 and by half again in 2021 when it received 1,281 applications and had 3,265 pending applications.⁶ When Malta's population of approximately 490,000 people is taken into account, the ratio of asylum seekers to the population is one of the highest in Europe. This has caused "significant repercussions in terms of resources and accommodation logistics, as well as in relation to other key aspects, including international protection, integration as well as the return of those found not to be deserving of international protection."⁷ The majority of asylum seekers are nationals of Sudan, Syria, Eritrea, Somalia, and Libya.⁸ In 2020, Malta and Libya signed a memorandum of understanding to establish coordination between the two countries to help stop illegal migration.⁹

II. Legislation

The International Protection Act provides the framework for those seeking international protection and refugee status in Malta. Article 2 of the act defines the term refugee as

a third country national who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, as a result of such events is unable or, owing to such fear, is unwilling to return to it.¹⁰

Acts of persecution are defined as

- (a) acts of physical or mental violence, including acts of sexual violence;
- (b) legal, administrative, police, and/or judicial measures
- (c) prosecution or punishment which is disproportionate or discriminatory;
- (d) denial of judicial redress resulting in a disproportionate or discriminatory manner;
- (e) prosecution or punishment for refusal to perform military service in a conflict, where performing military service would include crimes or acts falling within the scope of the grounds for exclusion as set out in article 12(2);
- (f) acts of a gender-specific or child-specific nature.¹¹

The events that cause the well-founded fear of persecution may arise after the applicant has left the country, or be based on acts the applicant has engaged in since they left the country of origin, unless this is "based on circumstances which the applicant has created by his own decision since leaving the country of origin."¹²

⁶ Aditus, *Aida Asylum Information Database Country Report: Malta 33* (2021), <https://perma.cc/G4YF-J4ZR>.

⁷ *Strategy for the Reception of Asylum Seekers and Irregular Migrants*, supra note 1, at 3.

⁸ *Id.* at 33.

⁹ Press Release, Government of Malta, PR 201016, Statement by the Office of the Prime Minister, May 28, 2020, <https://perma.cc/K4XP-B4SA>.

¹⁰ International Protection Act art. 2, <https://perma.cc/XN2G-X4YW>.

¹¹ *Id.*

¹² *Id.* art 8.

Refugee status is granted to an individual in Malta “where it is established that he faces a well-founded fear of persecution in his country of origin or habitual residence in terms of the Convention.”¹³

Article 14 of the International Protection Act incorporates the prohibition of *non-refoulement* into the national law of Malta, providing

[a] person shall not be expelled from Malta or returned in any manner whatsoever to the frontiers of territories where the life or freedom of that person would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.¹⁴

Malta has enacted a number of regulations, many of which transpose EU directives into its national law, including the following:

- Procedural Standards for Granting and Withdrawing International Protection Regulations,¹⁵
- Reception of Asylum-Seekers Regulations,¹⁶
- Temporary Protection for Displaced Persons (Minimum Standards) Regulations,¹⁷ and
- International Protection Appeals Tribunal (Procedures) Regulations,¹⁸

The principle of *refoulement*, contained in article 33 of the UN Convention on Refugees, prohibits the return of refugees to a country where their lives or freedom would be threatened. Under Maltese law, this prohibition does not apply to refugees when there are reasonable grounds to believe that they are a danger to the security of Malta or have been convicted of a serious crime and constitute a danger to the community.¹⁹

III. Responsible Entity

The International Protection Agency (IPA, previously the Office of the Refugee Commissioner) is part of the Ministry for Home Affairs, National Security and Law Enforcement. It is responsible for receiving, processing, and determining applications for international protection.²⁰ As of 2021, the IPA had 14 caseworkers, with only five caseworkers responsible for conducting interviews

¹³ Id.

¹⁴ Id. art. 14.

¹⁵ Procedural Standards for Granting and Withdrawing International Protection Regulations, SL 420.07, <https://perma.cc/9JL9-BKGJ>.

¹⁶ Reception of Asylum Seekers Regulations, SL 420.06, <https://perma.cc/JPE5-KGHB>.

¹⁷ Temporary Protection for Displaced Persons (Minimum Standards) Regulations, SL 420.05, <https://perma.cc/2LWL-F7PC>.

¹⁸ International Protection Appeals Tribunal (Procedures) Regulations, SL 420.01, <https://perma.cc/U4C6-PA3Z>.

¹⁹ Id. reg. 9(2).

²⁰ *International Protection Agency*, Home Aff., <https://perma.cc/24WC-TELU>.

and three officials who draft decisions.²¹ Beginning in 2019, the EU Agency for Asylum (EUAA, formerly the European Asylum Support Office) began to provide significant support for Malta due to an increase in the number of asylum seekers arriving in the country by sea. An operating agreement is in place through 2024.²² EUAA has provided human resources to help the IPA process asylum applications, deploying 45 staffers who examine applications, with 17 of these conducting interviews and drafting recommendations to the IPA.²³

IV. Asylum Procedure

In Malta, the IPA is responsible for all parts of the process for international protection, beginning with the registration, “examination and determination of eligibility for subsidiary protection being undertaken by the . . . IPA.”²⁴ All applications for asylum must be made at IPA premises.²⁵ It has three procedures under which an applicant for international protection may be processed: a regular procedure, an accelerated procedure, or the Dublin procedure, and these are described below. No time limit is specified in which an asylum seeker must make or lodge an application. The law provides that the IPA cannot reject or exclude applications from examination merely because they were not made as soon as possible.²⁶ Registering and lodging an application are distinct stages.²⁷

A. Detention

Malta has adopted a policy of detaining those who enter the country irregularly. They are detained until an assessment is made by the Immigration Police, although this is waived for vulnerable persons.²⁸ A report from Aditus and the European Council on Refugees and Exiles found that the irregular migrants authorities find entering Malta by sea are “automatically and systematically detained without any form of [initial] assessment,”²⁹ and that most registration for international protection occurs in detention centers.³⁰ In 2021, of the 1,281 applications for asylum received, the 838 applicants that arrived by sea were all detained.³¹

²¹ Aditus, *supra* note 6, at 15.

²² *Member States Operations: Malta*, EUAA, <https://perma.cc/NYH4-URSH>; EUAA, *Operating Plan 2022-2024 Agreed by the European Asylum Support Office and Malta* (Dec. 16, 2021), <https://perma.cc/PA9V-8T5M>.

²³ Aditus, *supra* note 6, at 16; *Operating Plan 2022-2024 Agreed by the European Asylum Support Office and Malta*, *supra* note 22.

²⁴ International Protection Act art. 4(3); Aditus, *supra* note 6, at 17, 31.

²⁵ Aditus, *supra* note 6, at 32.

²⁶ Procedural Standards for Granting and Withdrawing International Protection Regulations reg. 8(1).

²⁷ *Id.* reg. 8(1); Aditus, *supra* note 6, at 31.

²⁸ *Strategy for the Reception of Asylum Seekers and Irregular Migrants*, *supra* note 1, at 7.

²⁹ *Id.* at 58 and 93; Reception of Asylum Seekers Regulations reg. 6(1)(a).

³⁰ Aditus, *supra* note 6, at 31.

³¹ *Id.* at 93.

The Reception of Asylum Seekers Regulations provide six grounds under which applicants may be detained.³² Malta typically detains an applicant to determine or verify the applicant's identity or nationality, to medically screen the applicant for contagious diseases,³³ or determine the elements on which the application is based, in particular, when there is a risk that the applicant will abscond.³⁴ While vulnerable groups and individuals, such as families and children, are supposed to receive different treatment, there is currently no assessment that occurs prior to detention.³⁵

B. Lodging an Application

Asylum seekers must lodge their applications with the IPA or EUAA by completing and signing application forms that state the reasons that they are seeking protection. The IPA or EUAA then collects the asylum seekers' personal details, photographs, and fingerprints and enters their information into the Eurodac database.³⁶ Each asylum seeker is provided with a unique IPA number and an asylum seeker document.³⁷

C. Interviews

After the application form has been lodged and it is determined that Malta is the country responsible for processing the application, the IPA will schedule an interview with the applicant "on the substance of the claim"³⁸ as soon as it is reasonably practicable.³⁹ The interview requirements are set out in the Procedural Standards for Granting and Withdrawing International Protection Regulations.⁴⁰ The standards stipulate that an "applicant shall be given the opportunity of a personal interview with a person competent to conduct an interview."⁴¹ The interviewer must have received training in accordance with article 6(4)(a-e) of Regulation (EU) No 439/2010 and any other training established by the EUAA. The interview must occur in the language preferred by the applicant, with an interpreter present, if necessary.⁴² If requested, the interviewer should be the same sex as the applicant and must not wear any kind of military or law enforcement uniform. The interviewer must be able to take into account "the personal or general circumstances surrounding the applicant's cultural origin, gender, sexual orientation,

³² Reception of Asylum Seekers Regulations, SL 420.06, § 6(1).

³³ Prevention of Disease Ordinance, <https://perma.cc/XM3M-MFRL>.

³⁴ Reception of Asylum Seekers Regulations reg. 6.

³⁵ Aditus, *supra* note 6, at 94.

³⁶ *Id.* at 47; Eurodac (*European Asylum Dactyloscopy Database*), Eur. Comm'n, <https://perma.cc/GCS4-8ZEW>.

³⁷ Aditus, *supra* note 6, at 17.

³⁸ Procedural Standards for Granting and Withdrawing International Protection Regulations, SL 420.07, reg. 10(3).

³⁹ International Protection Act art. 13.

⁴⁰ Procedural Standards for Granting and Withdrawing International Protection Regulations reg. 10(3).

⁴¹ *Id.* reg. 10.

⁴² *Id.* reg. 10(10)(b).

gender identity or vulnerability,” be properly trained, and have “the acquired knowledge of problems which might affect the applicant’s ability to be interviewed.”⁴³

The interview must occur “under conditions which ensure appropriate confidentiality.”⁴⁴ The regulations further provide that the applicant will be interviewed without family members present, although it grants the IPA the ability to include them if it considers it necessary and further requires that interviews with minors be conducted in a manner appropriate for their age.⁴⁵ All interviews should provide applicants with the opportunity to present their case for protection and the elements that substantiate their claim, including the opportunity to explain missing elements and inconsistencies or contradictions.⁴⁶ While not required, applicants are permitted to have legal representation present at their interviews, but the legal adviser may only intervene at the end of the personal interview.⁴⁷

Interviews are recorded, and the IPA must make a thorough report on all the substantive elements or provide a transcript for every interview conducted. In cases where recordings are made, the IPA must connect the recording with the applicant’s file. Unless the recording is admissible as evidence in any appeals procedure, the applicant must confirm the accuracy of the contents of the report or transcript and be given the opportunity to comment on or clarify any mistranslations or misconceptions, either at the end of the interview or before the IPA makes its decision.⁴⁸ If the applicant refuses to confirm the report or transcript, the reasons for any refusal should be noted.⁴⁹

The regulations provide that the IPA may make a decision on an asylum application without an interview,⁵⁰ and specifically excludes the need for an interview in cases where

- a) the International Protection Agency is able to make a positive recommendation on the basis of evidence available; or
- (b) . . . it is not reasonably practicable, in particular, where the International Protection Agency is of the opinion that the applicant is unfit or unable to be interviewed owing to enduring circumstances beyond his control; provided that when in doubt, the International Protection Agency may require a medical or psychological certificate to establish whether the condition that makes the applicant unfit or unable to be interviewed is of a temporary or enduring nature.⁵¹

⁴³ Id. reg. 10(10).

⁴⁴ Id. reg. 10(9).

⁴⁵ Id. reg. 10(8).

⁴⁶ Id. reg. 10(11).

⁴⁷ Id. reg. 12(4).

⁴⁸ Id. reg. 11(3), (5).

⁴⁹ Id. 11(6).

⁵⁰ Id. reg. 10(6).

⁵¹ Id. reg. 10(5).

A report by Aditus and the European Council on Refugees and Exiles found that, in practice, unless an asylum seeker's application is declared inadmissible due to having protection from another Member State, all asylum seekers are interviewed, and this is typically conducted by the EUAA, which processes claims based on both admissibility and merits.⁵²

As noted above, the EUAA "supports the IPA in the examination of asylum applications by conducting the interviews and preparing opinions recommending a first instance decision."⁵³ The EUAA published guidance for conducting interviews in 2015, as referenced in the EU entry in this report.⁵⁴ There are references to a new interview and assessment template that "is shorter, clearer, and clearly differentiates the establishment of material facts and the legal analysis. It leaves more space for the caseworker to develop a reasoned individual assessment."⁵⁵ However, we have been unable to locate this document.

Applicants are told after their interviews that they will be notified of the decision at a later date.⁵⁶ An experienced officer then reviews the caseworkers' decisions. The IPA makes the final decisions,⁵⁷ including the reasons based on both law and fact.⁵⁸ This is supposed to occur within 21 months from the date an applicant lodged the application, although, in practice, most decisions occur outside this period.⁵⁹

D. Regular Procedure

Under the regular procedure, the IPA receives the application and then conducts an interview. For individuals who are not detained, reports indicate it can take up to a year to be interviewed.⁶⁰ If the claim is determined to be manifestly unfounded or inadmissible, it is rejected and subject to automatic review by the International Protection Appeals Tribunal (IPAT)⁶¹ under the accelerated procedure, which is described below. There are a number of factors that the IPA must consider when determining whether an application is manifestly unfounded. These include, but are not limited to, whether the applicant has

⁵² Aditus, *supra* note 6, at 35.

⁵³ *Regular Procedure, Malta*, Asylum Info. Database & Eur. Council on Refugees & Exiles, <https://perma.cc/JS3P-RC4V>.

⁵⁴ *EASO Practical Guide: Personal Interview*, Eur. Asylum Support Off. (Dec. 2014), <https://perma.cc/3M8C-E3CB>.

⁵⁵ Aditus, *supra* note 6, at 35.

⁵⁶ *Id.* at 17.

⁵⁷ *Id.*

⁵⁸ *International Protection Agency*, *supra* note 20.

⁵⁹ Procedural Standards for Granting and Withdrawing International Protection Regulations, reg. 6(6); Aditus, *supra* note 6, at 17.

⁶⁰ Aditus, *supra* note 6, at 17 & 34.

⁶¹ International Protection Act art. 5.

- not raised facts that are relevant to a claim for international protection,
- arrived from a safe country of origin,
- misled authorities by providing false information or documents or has withheld information about his or her identity or nationality,
- destroyed or disposed of identification or travel documents in bad faith,
- made inconsistent and contradictory representations that are "clearly false or obviously improbable representations which contradict sufficiently verified country-of-origin information [that] make[s] his claim clearly unconvincing",⁶²
- entered, or remained in, Malta unlawfully and not applied for international protection as soon as possible,
- introduced another application for international protection,
- applied for international protection to delay or frustrate his removal from the country, or
- refused to have his fingerprints taken or acted in a way considered dangerous to national security or public order.⁶³

If the claim is rejected on other grounds, the applicant may appeal it to the IPAT. Once notified of the IPA's decision, an applicant has two weeks in which to appeal to the IPAT.

[A]n appeal on both facts and points of law shall lie against:

(a) a decision taken on an application for international protection:

(i) considering an application to be unfounded in relation to refugee status and, or subsidiary protection status;

(ii) considering an application to be inadmissible pursuant to article 24; Provided that for the purpose of this provision, the review conducted by the Chairperson of the International Protection Appeals Tribunal shall be deemed to constitute an appeal.

(iii) not to conduct an examination pursuant to article 24(1)(c); S.L.420.07

(b) a refusal to reopen the examination of an application after the discontinuation in accordance with regulation 13 of the Procedural Standards in Examining Applications for International Protection Regulations;

(c) a withdrawal of international protection.⁶⁴

⁶² Id. art. 2

⁶³ Id. art. 2.

⁶⁴ Id. art. 7(1A).

E. Accelerated Procedure

In 2021, to help reduce the backlog, the IPA discontinued applications as implicitly withdrawn where applicants had missed their calls for an interview or failed to renew a document or complete a questionnaire.⁶⁵ Malta also prioritized the processing of cases the IPA considered prima facie inadmissible or manifestly unfounded,⁶⁶ using an accelerated procedure that does not provide a route for appeal of rejected applications.⁶⁷ Under the accelerated procedure, once the IPA determines that an application is manifestly unfounded, it must be examined within three working days, the applicant must be interviewed, and a decision must be made within this timeframe.⁶⁸ While the applicant is not permitted to appeal the decision, IPAT automatically examines and reviews the decision. This must occur within three days. An asylum seeker whose country of origin is deemed to be feasible for returns is typically detained, and the accelerated process is used to review the application.

Because of the introduction of this procedure, the recognition rate of asylum seekers dropped to 8%.⁶⁹ This approach has been criticized, with a report from Aditus and the European Council on Refugees and Exiles stating it “prioritises applications likely to be manifestly unfounded to the detriment of other asylum seekers, whose applications are left pending far beyond the deadlines foreseen by law for obtaining a decision.”⁷⁰ For second instance procedures, IPAT issued a substantial number of rejections based on the appellant’s failure to file submissions, which “automatically leads the IPAT to reject the case without going into the merits.”⁷¹ The number of successful second instance cases was 0%.⁷²

F. Dublin Procedure

The Dublin Procedure is the process for determining whether another EU Member State should be responsible for examining an application for international protection from a third country national.⁷³ When asylum seekers register their intent to apply for international protection, they are asked to respond to a questionnaire that is used to determine whether the Dublin Procedure should be used.⁷⁴ There is no specific law in Malta that transposes the Dublin Regulation into its national laws, and transfers of asylum seekers in accordance with the Dublin Regulation are

⁶⁵ Aditus, supra note 6, at 17.

⁶⁶ International Protection Act arts. 23-24.

⁶⁷ Aditus, supra note 6, at 11.

⁶⁸ International Protection Act art. 24(3).

⁶⁹ Aditus, supra note 6, at 12.

⁷⁰ Id.

⁷¹ Id.

⁷² Id.

⁷³ Regulation (EU) No. 604/2013 of the European Parliament and of the Council, 2013 O.J. (L 180) 31, <https://perma.cc/J79P-EWKL>.

⁷⁴ Aditus, supra note 6, at 47.

treated as an administrative procedure.⁷⁵ If the IPA believes that an application falls under the Dublin Procedure, it is transferred to the Dublin Unit within the IPA, which conducts an interview with the applicant and, if the applicant is credible, determines which country is responsible.⁷⁶ Examinations of the applicant for protection are suspended pending the outcome of any Dublin proceedings. If the application is rejected, the applicant may appeal the decision to the IPAT.⁷⁷

G. Vulnerable Members

The Reception of Asylum Seekers Regulations transpose the EU's Reception Conditions Directive into the national law of Malta. The Agency for the Welfare of Asylum Seekers (AWAS) is responsible for screening asylum seekers for vulnerability.⁷⁸ At the point of disembarkation, "only persons who are manifestly and visibly vulnerable (e.g., families with young children) are identified and flagged by AWAS."⁷⁹ Others who may be flagged as vulnerable include those with serious chronic illnesses, the mentally ill, individuals over 60 years of age, the physically disabled, and those with psychological problems.⁸⁰ Unaccompanied minors who declare they are below 18 years of age when they enter Malta or provide this information on their application form are referred to AWAS. It assesses the age of those whose age is in question, which must be completed within six days of the child's arrival.⁸¹ Once identified as a minor, the child is referred to Child Protection Services, which files a request for a care order with the Maltese courts, which typically appoint AWAS as the legal guardian of the child.⁸²

H. Review

While the International Protection Act does not provide any rights of appeal from the IPAT, Article 469A of the Code of Civil Procedure provides for judicial review of administrative acts, and an application for review may be made to the First Hall of the Civil Court.⁸³ Instances of breaches of fundamental rights can be heard under both the Maltese Constitution and the European Convention on Human Rights. Appeals from these decisions are filed with the Constitutional Court.

⁷⁵ *Id.* at 46.

⁷⁶ *International Protection Agency*, *supra* note 20.

⁷⁷ *International Protection Act* art. 7(1); *Aditus*, *supra* note 6, at 14.

⁷⁸ *Agency for the Welfare of Asylum Seekers Regulations 2009*, SL 217.11, <https://perma.cc/W94B-FR7Z>.

⁷⁹ *Aditus*, *supra* note 6, at 58.

⁸⁰ *Id.*

⁸¹ *Id.* at 60.

⁸² *Id.*; *International Protection Act* art. 13; *Children and Young Persons (Care Orders) Act*, <https://perma.cc/3U5N-N8GL>.

⁸³ *Procedural Standards in Examining Applications for Refugee Status Regulations* reg. 12.

Portugal

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SUMMARY The Portuguese Constitution grants the right to asylum under specific circumstances to foreigners and stateless persons and a law regulates the procedures for granting asylum. Basically, these persons have the right to asylum if they are persecuted or threatened with persecution due to their activities in the state of their nationality. The law defines acts of persecution, the agents of persecution, the process to submit an application for asylum, and the duties of the applicant. Furthermore, the law provides the elements that the agency responsible for processing these applications needs to take into account when assessing these requests.

I. Constitutional Principle

According to the Portuguese Constitution, the right of asylum is guaranteed to foreigners and stateless persons who are the object, or are under grave threat, of persecution as a result of their activities in favor of democracy, social and national liberation, peace among peoples, freedom, or the rights of the human person.¹

II. Asylum Law

Law No. 27 of June 30, 2008 transposes several European Union directives into Portugal's legal order and establishes the conditions and procedures for granting asylum or subsidiary protection and the status of asylum seekers, refugees, and those granted subsidiary protection.²

A. Definitions

Article 2(1) of Law No. 27 provides several definitions of terms used for the purpose of the law.

b) "Beneficiary of international protection" means a person who has been granted refugee status or subsidiary protection status, defined in paragraphs (i) and (j);

...

(i) "Subsidiary protection status" means the recognition, by the competent Portuguese authorities, of a foreigner or a stateless person as an eligible person for granting a residence permit for subsidiary protection;

...

¹ Constituição da República Portuguesa, VII Revisão Constitucional [2005], art. 33(8), <https://perma.cc/RJ4A-9FJ5>.

² Lei No. 27/2008, de 30 de Junho, as amended by Lei No. 26/2014, de 5 de Maio, art. 1, <https://perma.cc/UH7B-UCKE>.

j) “Refugee status” means the recognition, by the competent Portuguese authorities, of a foreigner or a stateless person as a refugee who, in that capacity, is authorized to remain in national territory;

...

s) “Application for international protection” means an application for protection submitted by a foreigner or stateless person who wishes to benefit from refugee or subsidiary protection status and does not expressly request another form of protection that may be subject to a separate application;

...

x) “Eligible person for subsidiary protection” means a third-country national or a stateless person who cannot be considered a refugee, but for whom there have been significant grounds for believing that he or she cannot return to his or her country of origin or, in the case of the stateless person, to the country in which he or she had his or her habitual residence, either in view of the systematic violation of human rights that takes place there, or because he or she runs a real risk of suffering serious harm within the meaning of article 7, and to which article 9(1) (which defines the situations that exclude the applicant from asylum and subsidiary protection) does not apply, and who is unable or, as a result of the aforementioned situations, is unwilling to request the protection of that country;

...

ac) “Refugee” means a foreigner or stateless person who, with good fear of being persecuted as a result of activities carried out in the State of his or her nationality or habitual residence in favor of democracy, social and national liberation, peace between peoples, freedom and rights of the human person or by virtue of his or her race, religion, nationality, political convictions or membership of a particular social group, is outside the country of which he or she is a national and is unable or, owing to such fear, is unwilling to ask for protection of that country or a stateless person who, being outside the country in which he or she had his or her habitual residence, for the same reasons, is unable or, owing to such fear, is unwilling to return to it, and to which the provisions of article 9 do not apply.³

B. Beneficiaries of International Protection

1. Granting of the Right of Asylum

According to article 3(1) of Law No. 27, the right of asylum is guaranteed to foreigners and stateless persons who are persecuted or seriously threatened with persecution, as a result of activities carried out in the state of their nationality or of their habitual residence in favor of democracy, social and national liberation, peace between peoples, freedom, and human rights.⁴

Foreigners and stateless persons also have the right to be granted asylum in cases where they fear being persecuted on account of their race, religion, nationality, political opinions, or integration into a certain social group, and are unable or, due to this fear, are unwilling to return to the state of their nationality or habitual residence.⁵ It is irrelevant that the applicant actually possesses the

³ Id. art. 2(1).

⁴ Id. art. 3(1).

⁵ Id. art. 3(2).

characteristic associated with the race, religion, nationality, social, or political group that induces the persecution, provided that such characteristic is attributed to him by the agent of persecution.⁶

Asylum can only be granted to a foreigner who has more than one nationality when the reasons for persecution referred to in the previous paragraphs are verified in relation to all the states of which he is a national.⁷

2. *Effects of Granting the Right of Asylum*

The granting of the right of asylum under the terms of article 3 grants the beneficiary the status of refugee, under the terms of Law No. 27, without prejudice to the provisions of international treaties or conventions to which Portugal is a party or to which it adheres.⁸

3. *Acts of Persecution*

For the purposes of article 3, acts of persecution capable of justifying the right of asylum must constitute, by their nature or repetition, a serious violation of fundamental rights, or translate into a set of measures that, by their accumulation, nature, or repetition, affect the alien or stateless person in a way similar to that resulting from a serious violation of fundamental rights.⁹

Acts of persecution may, in particular, take the following forms:

- a) Acts of physical or mental violence, including those of a sexual nature;
- b) Legal, administrative, police or judicial measures, when they are discriminatory or applied in a discriminatory manner;
- c) Disproportionate or discriminatory legal action or sanctions;
- d) Refusal of access to a judicial remedy that translates into a disproportionate or discriminatory sanction;
- e) Legal actions or sanctions for refusing to perform military service in a conflict situation in which the performance of military service would imply the practice of a crime or act likely to lead to exclusion from the refugee status, under the terms of article 9(1)(c) (suspicion of practice of crimes);
- f) Acts committed specifically on the grounds of gender or against minors.¹⁰

The information necessary for making decisions on the status of international protection cannot be obtained in such a way that the agents of persecution are informed of the fact that the status is

⁶ Id. art. 3(4).

⁷ Id. art. 3(3).

⁸ Id. art. 4.

⁹ Id. art. 5(1).

¹⁰ Id. art. 5(2).

being considered or that it endangers the physical integrity of the applicant, or his family in Portugal or in the state of origin.¹¹

For the purposes of recognition of the right to asylum, there must be a link between the reasons for persecution and the acts of persecution referred to in article 3(1) or the lack of protection in relation to such acts.¹²

4. *Agents of Persecution*

According to article 6(1) of Law No. 27, the following are agents of persecution:

- a) The State;
- b) The parties or organizations that control the State or a significant portion of its territory;
- c) Non-State agents, if it is proven that the agents mentioned in sub-paragraphs (a) and (b) are unable or unwilling to provide protection against persecution, pursuant to article 6(2).¹³

Article 6(2) determines that for the purposes of article 6(1)(c), protection is considered to exist whenever the agents mentioned in subparagraphs (a) and (b) of article 6(1) adopt adequate measures to effectively and not temporarily prevent the practice of acts of persecution through, inter alia, the introduction of an effective legal system to detect, prosecute, and punish such acts, provided that the applicant has access to effective protection.¹⁴

5. *Subsidiary Protection*

A residence permit for subsidiary protection is granted to foreigners and stateless persons to whom the provisions of article 3 of Law No. 27 are not applicable and who are prevented or feel unable to return to the country of their nationality or habitual residence, either in view of the systematic violation of human rights that takes place there, or because they run the risk of suffering serious harm.¹⁵ A serious offense is considered

- a) The death penalty or execution;
- b) Torture or inhuman or degrading treatment or punishment of the applicant in his/her country of origin; or
- c) Serious threat to the life or physical integrity of the applicant, resulting from indiscriminate violence in situations of international or internal armed conflict or from generalized and indiscriminate violation of human rights.¹⁶

¹¹ Id. art. 5(3).

¹² Id. art. 5(4).

¹³ Id. art. 6(1).

¹⁴ Id. art. 6(2).

¹⁵ Id. art. 7(1).

¹⁶ Id. art. 7(2).

The provisions of article 6 of Law No. 27 are correspondingly applicable.¹⁷

6. *Sur Place Protection*

The well-founded fear of being persecuted, under the terms of article 3 of Law No. 27, or the risk of suffering serious harm, under the terms of article 7, may be based on events that occurred or activities carried out after leaving the state of nationality or habitual residence, especially if it is shown that the activities on which the asylum application is based constitute the expression and continuation of convictions or orientations already expressed in that state.¹⁸ These provisions are not applicable when the fear or risk arises from circumstances created by the foreigner or stateless person after leaving the state of nationality or habitual residence, exclusively with the aim of benefiting, without sufficient reason, from refugee or subsidiary protection status.¹⁹

7. *Exclusion from Asylum and Subsidiary Protection*

Article 9 of Law No. 27 lists the reasons a foreigner or stateless person cannot benefit from refugee status, which include, but are not limited to, grave suspicions of criminal activities, or if the person represents a danger or a well-founded threat to internal or external security or to public order.²⁰

C. Processing

1. *Application for International Protection*

Article 10 states that it is presumed that any request for protection, even if implicit, is a request for international protection, in accordance with the provisions of article 2(1)(s) of Law No. 27.²¹ When considering applications for international protection, it must first be determined whether the applicant meets the conditions to benefit from refugee status and, if not, whether he is eligible for subsidiary protection.²² Applications for international protection submitted to the authorities of other member states that carry out border or immigration controls in the national territory are assessed by the Immigration and Borders Service (*Serviço de Estrangeiros e Fronteiras*, SEF).²³

¹⁷ Id. art. 7(3).

¹⁸ Id. art. 8(1).

¹⁹ Id. art. 8(2).

²⁰ Id. art. 9(1)(c)(d).

²¹ Id. art. 10(1).

²² Id. art. 10(2).

²³ Id. art. 10(3).

2. *Right to Remain in the National Territory*

Applicants for international protection are authorized to remain in the national territory until the decision on the admissibility of the application is made.²⁴ This right of stay does not entitle the applicant to the issuance of a residence permit.²⁵

3. *Effects of Applying for International Protection on Offenses Relating to Entry into the Country*

The submission of an application for international protection precludes any administrative procedure or criminal proceeding for irregular entry into national territory instituted against the applicant and accompanying family members.²⁶ The procedure or process is archived if international protection is granted.²⁷

4. *Submission of the Application*

A foreigner or stateless person who enters the national territory in order to obtain international protection must submit his or her request without delay to the SEF or any other police authority, and may do so in writing or orally, in which case a report must be made in writing.²⁸

5. *Duties of Applicants for International Protection*

The applicant must present all the necessary elements to justify the request for international protection, namely

- a) Identification of the applicant and his or her family members;
- b) Indication of their nationality, country or countries and previous place or places of residence;
- c) Indication of previous requests for international protection;
- d) Report of the circumstances or facts that justify the need for international protection;
- e) Allow the collection of fingerprints from all fingers, provided that the persons are at least 14 years old, in accordance with Regulation (EU) No. 603/2013 of June 26, of the European Parliament and of the Council, concerning the creation of the “Eurodac” fingerprint comparison system;
- f) Keep SEF informed about their residence, and must immediately notify this service of any change of address;
- g) Appear before the SEF when requested to do so, in relation to any circumstance of their request.²⁹

²⁴ Id. art. 11(1).

²⁵ Id. art. 11(2).

²⁶ Id. art. 12(1).

²⁷ Id. art. 12(2).

²⁸ Id. art. 13(1).

²⁹ Id. art. 15(1).

For the purposes of these provisions, the applicant must also, together with the request for international protection, present the identification and travel documents available, as well as evidence, and may present witnesses in a number of not more than 10.³⁰

6. *Statements*

Before rendering any decision on the application for international protection, the applicant is guaranteed the right to provide statements in the language of his or her choice or in another language that he or she can understand and through which he or she communicates clearly, under conditions that guarantee due confidentiality and that allow him or her to state the circumstances that support his or her claim.³¹ The provision of statements assumes an individual character, unless the presence of family members is considered necessary for an adequate assessment of the situation.³² As soon as the SEF receives the request for international protection, the service immediately notifies the applicant to provide statements within a period of two to five days.³³

Article 16(5) of Law No. 27 determines that the provision of statements can only be waived

- a) If conditions already exist to decide favorably on refugee status on the basis of the available evidence;
- b) If the applicant is considered unfit or unable to do so due to lasting circumstances beyond his or her control.³⁴

When the condition for the waiver of the provision of statements under the terms of article 16(5) is not present, the SEF must arrange for the applicant or the person in charge to communicate, by any means, other information.³⁵

7. *Report*

After carrying out the above steps, the SEF prepares a written report containing essential information regarding the request.³⁶ The report is notified to the applicant so that he or she can comment on it within five days.³⁷

8. *Special Procedural Guarantees*

After submitting the application for protection and before the decision provided for in articles 20 (concerning the competence of the SEF director to assess and decide) and 24 (regarding the

³⁰ Id. art. 15(2).

³¹ Id. art. 16(1).

³² Id. art. 16(2).

³³ Id. art. 16(3).

³⁴ Id. art. 16(5).

³⁵ Id. art. 16(6).

³⁶ Id. art. 17(1).

³⁷ Id. art. 17(2).

assessment of the application and its decision), the need for special procedural guarantees for applicants whose ability to exercise rights and fulfill obligations is limited due to personal circumstances must be evaluated. Such personal circumstances include age, sex, sexual identity, sexual orientation, disability or serious illness, mental disorder, or because they have been victims of torture, rape or other serious forms of psychological, physical, or sexual violence.³⁸

In cases where applicants are identified in the circumstances mentioned above, support and conditions necessary for the exercise of the rights and duties inherent to the international protection procedure must be provided.³⁹ Within the scope of the special conditions to be provided, the deadlines for conducting an interview or presenting evidence and for carrying out interviews with the support of experts in the identified areas may be extended.⁴⁰

9. Assessment of the Request

In assessing each application for international protection, the SEF is responsible for analyzing all relevant elements, namely the applicant's statements, made under the terms of the previous articles, and all available information.⁴¹ In assessing the request, the SEF takes into account the following in particular:

- a) The relevant facts concerning the country of origin, obtained from sources such as the European Asylum Support Office, the United Nations High Commissioner for Refugees and relevant human rights organizations, at the time of the decision on the application, including the respective legislation and regulations and the guarantees of its application;
- b) The applicant's personal situation and circumstances, in order to assess, based on that personal situation, whether he has suffered or may suffer persecution or serious harm;
- c) Whether the applicant's activities, since he left his country of origin, had the sole or main purpose of creating the necessary conditions for applying for international protection, in order to assess whether these activities could expose him to persecution or serious harm, in the event of return to that country;
- d) Whether it is reasonable to foresee that the applicant may avail himself of the protection of another country from which he may claim citizenship;
- e) The possibility of internal protection if, in a part of the country of origin, the applicant:
 - i) Has no well-founded fear of being persecuted or is not facing a real risk of serious harm; or
 - ii) Has access to protection against persecution or serious harm, as defined in article 5 (acts of persecution) and article 7(2) (serious offense) of Law No. 27, is able to travel and be admitted safely and regularly to that part of the country and has reasonable expectations of being able to settle there.⁴²

³⁸ Id. art. 17-A(1).

³⁹ Id. art. 17-A(2).

⁴⁰ Id. art. 17-A(3).

⁴¹ Id. art. 18(1).

⁴² Id. art. 18(2).

The fact that the applicant has already been persecuted or directly threatened with persecution, or has suffered or been directly threatened with serious harm, is considered a serious indication of a well-founded fear of being persecuted or of the risk of suffering serious harm, unless there are well-founded reasons to consider that the grounds of such persecution or serious offense have ceased and will not be repeated.⁴³

The applicant's statements must be confirmed by documentary evidence or other means of evidence admitted by law, unless the following conditions are cumulatively met:

- a) The applicant has made an authentic effort to substantiate his application;
- b) The applicant presents all the elements at his or her disposal and a satisfactory explanation for the possible lack of others considered relevant;
- c) The statements made by the applicant are considered consistent, plausible, and not contradictory in view of the available information;
- d) The application has been submitted as soon as possible, unless the applicant provides sufficient justification for not having done so;
- e) The general credibility of the applicant has been established.⁴⁴

10. Accelerated Processing

The analysis of the conditions to be fulfilled to benefit from the international protection status is subject to an accelerated processing and the request is considered unfounded when it is found that

- a) The applicant has misled the authorities by presenting false information or documents or concealing important information or documents concerning his identity or nationality that could have a negative impact on the decision;
- b) It is likely that, in bad faith, the applicant has destroyed or lost identity or travel documents that could contribute to the determination of his identity or nationality;
- c) The applicant has made statements that are clearly inconsistent and contradictory, manifestly false or obviously implausible that contradict sufficiently verified information about the country of origin, detracting credibility from the allegation as to the reasons for fulfilling the requirements to benefit from protection;
- d) The applicant has entered or remained illegally in national territory and has not submitted the request for international protection as soon as possible, without valid reasons;
- e) When submitting the application and setting out the facts, the applicant invokes only non-relevant or minimally relevant issues to analyze compliance with the conditions to be considered a refugee or person eligible for subsidiary protection;
- f) The applicant comes from a safe country of origin;
- g) The applicant submitted a subsequent application which was not considered inadmissible under article 19-A of Law No. 27;

⁴³ Id. art. 18(3).

⁴⁴ Id. art. 18(4).

- h) The applicant submitted the application only with the aim of delaying or preventing the application of a previous or imminent decision that results in his removal;
- i) The applicant represents a danger to internal security or public order;
- j) The applicant refuses to be subject to the mandatory registration of his fingerprints in accordance with Regulation (EU) No. 603/2013 of 26 June of the European Parliament and of the Council, on the creation of the "Eurodac" system fingerprint comparison.⁴⁵

11. *Inadmissible Requests*

The request for international protection is considered inadmissible when it is found that

- a) It is subject to the special procedure for determining the State responsible for analyzing the application for international protection, provided for in Chapter IV of Law No. 27;
- b) The applicant has received international protection status in another member State;
- c) A country other than a member State is considered a first country of asylum;
- d) A country other than a member State is considered a safe third country;
- e) A subsequent application was submitted in which no new elements or data related to the analysis of compliance with the conditions to benefit from international protection have emerged or been presented;
- f) An application has been submitted by a person responsible for the applicant, after having consented to a previous application being submitted on his or her behalf and there are no elements that justify a separate application.⁴⁶

In these cases, the analysis of the conditions to be fulfilled in order to benefit from the status of international protection is waived.⁴⁷

12. *Competence to Assess and Decide*

It is incumbent upon the national director of the SEF to issue a reasoned decision on unfounded and inadmissible requests within a period of 30 days from the date of submission of the request for international protection.⁴⁸ In the absence of a decision within this period, the request is considered accepted.⁴⁹

⁴⁵ Id. art. 19(1).

⁴⁶ Id. art. 19-A(1).

⁴⁷ Id. art. 19-A(2).

⁴⁸ Id. art. 20(1).

⁴⁹ Id. art. 20(2).

Sweden

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SUMMARY As a European Union (EU) Member State, Sweden must follow EU law. In particular, it must meet the goals contained in the Asylum Procedures Directive.

The asylum process is governed by the Alien Regulation. It requires that the interview be conducted orally, that an interpreter be present, that a transcript be made (unless the interview is video-recorded), and that the applicant be afforded an opportunity to review the transcript before the final decision on the application. In addition, minors have a right to appointed legal custodians, who must also be present during the interview.

The Migration Agency has published guidelines for how to evaluate asylum applications based on conditions such as sexual orientation, gender, country specific conditions, etc., depending on the asylum seeker's country of origin. For example, all homosexual persons from Ghana typically receive asylum status automatically, provided they can establish that they are or are perceived to be homosexual. The risk to this group from Ghana is considered inherent, and no additional evidence of persecution is needed. However, the Migration Agency will look at information, including publicly available information, to determine whether the stated ground for persecution, such as sexual orientation, is likely to be true or false. The Migration Agency also uses safe country lists to determine when asylum is not warranted.

I. Introduction

Sweden is a member of the European Union (EU), and as such, it must apply EU laws pertaining to asylum and refugees.¹ Moreover, Sweden has signed and ratified the 1951 Refugee Convention.²

The government agency that accepts and processes applications for asylum is the Swedish Migration Agency.³

¹ See Jenny Gesley, *Asylum Application Processes: European Union*.

² Convention Relating to the Status of Refugees (Refugee Convention), July 28, 1951, 189 U.N.T.S. 137, <https://perma.cc/VE59-R2RS>; States Parties to the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol, <https://perma.cc/G8LY-YJQE>.

³ Förordning med instruktion för Migrationsverket (SFS 2019:502), <https://perma.cc/J7JA-BNLB>.

The United Nations High Commissioner for Refugees (UNHCR) reviewed the quality of the Swedish asylum process in 2011. Many of the recommendations from the UNHCR report appear to have been implemented.⁴

II. Legislative Framework

As mentioned in the EU entry for this report,⁵ Member States, including Sweden, must transpose and meet the goals established by the EU Asylum Procedures Directive.⁶ In addition, the Migration Agency must follow the United Nations Convention on the Rights of the Child (Child Convention), which became law in Sweden in 2020.⁷

Asylum is regulated by the Alien Act and the Alien Regulation.⁸ Accordingly, asylum can be granted to an alien who is a refugee or in need of protection.⁹ In accordance with chapter 5, section 1b, an application for asylum may be rejected if the applicant

1. has been declared a refugee or alternatively in need of protection in another EU state;
2. has been declared a refugee or has equivalent protection in a non-EU country, if the applicant will be admitted to that country and there is protected from persecution and from being sent on to another country where he or she is at risk; persecution, or
3. can be sent to a country where he or she
 - does not risk being persecuted,
 - does not risk being subjected to the death penalty, corporal punishment, torture or other inhuman or degrading treatment or punishment,
 - is protected against being sent on to a country where he or she does not have equivalent protection,
 - has the opportunity to apply for protection as a refugee, and
 - has such a connection to the country in question that it is reasonable for him or her to travel there.

In cases referred to in the first paragraph 3, however, the application may not be rejected if

1. the applicant has a spouse, a child or a parent who is resident in Sweden and the applicant does not have an equally close family connection to the country to which the execution of an expulsion or expulsion decision can take place, or
2. the applicant, due to a previous long-term stay in Sweden with a residence permit or right of residence, has received a special connection here and lacks such connection or

⁴ Liv Feijen & Emelia Frennmark, *Kvalitet i svensk asylprövning: En studie av Migrationsverkets utredning av och beslut om internationellt skydd*, UNHCR (Sept. 2011), <https://perma.cc/88UT-5PR9>. For implementation, see legal position guidelines issued under part III.

⁵ Gesley, *supra* note 1.

⁶ Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on Common Procedures for Granting and Withdrawing International Protection, 2013 O.J. (L180) 60, <https://perma.cc/T2LB-XGTD>.

⁷ Lag om Förenta nationernas konvention om barnets rättigheter (SFS 2018:1197), <https://perma.cc/YP3C-H28G>.

⁸ Utlänningslag [UtL] (2005:716), <https://perma.cc/DUG6-AP2V>; Utlänningsförordning (SFS 2006:97), <https://perma.cc/P9WN-V9TC>.

⁹ 1 kap. 3 § UtL.

connection through relatives in the country where the execution of a deportation or expulsion decision can take place.¹⁰

An application for asylum is handled by the Swedish Migration Agency.¹¹ Certain applications may be rejected automatically, without further investigation, including if the person has received asylum in another EU Member State or if the applicant is from a safe country.¹²

Unless an asylum application can be rejected automatically, an asylum investigation must take place. The Alien Regulation provides that interviews must be oral, records must be made in writing, and the asylum applicant must be afforded a chance to read the record and make comments.¹³ However, a written record is not necessary if the interview has been filmed and made available to the applicant.¹⁴

If the applicant is a minor, an appointed legal custodian (*god man*) must be present at the asylum interview.¹⁵ All applicants must be asked whether they prefer to be interviewed by a male or female administrative officer and interpreter. When possible, their requests must be met.¹⁶

Moreover, the Migration Agency explains the asylum application process for persons present in Sweden on its website as follows:

1. Application

- You may fill in forms with questions about, for example, your name, citizenship, family.
- You must submit your passport or other identity documents to show who you are.
- The Swedish Migration Agency will photograph you and take your fingerprints. The fingerprints are used to see if you have applied for asylum in another country in Europe, or if you have a permit or prohibition to stay in any other country in Europe.
- With the help of an interpreter, you can tell us more about who you are, why you have left your home country and how you have travelled to Sweden.
- If you have no money of your own, you may apply for financial aid. You will receive a bankcard and information about daily allowance and special allowance.
- You will receive information about the asylum process, what the next step is, and what you have to do. You will also receive information on practical issues, such as your right to housing, care and school for the children.

¹⁰ 5 kap. 1b § UtL.

¹¹ 8 kap. 17 § UtL.

¹² 5 kap. 1b §.

¹³ 9a § Utlänningsförordning (SFS 2006:97), <https://perma.cc/P9WN-V9TC>.

¹⁴ Id.

¹⁵ Id. 9b §.

¹⁶ Id. 9c §.

2. Preparation and Investigation

- After you have submitted your application, an administrator will go through all your documents, what you have told us and what the searches on your fingerprints have shown.
- Based on the information that you have provided at the time of application, the case officer can determine how much your application needs to be investigated. All applications are different and therefore take different amounts of time to investigate.
- The case officer will prepare your application for further investigation. For example, it may be about retrieving information from other authorities.
- If the case officer deems that you need a public counsel, it will be appointed for you.
- If you need to complete your application, the case officer will contact you. This may be necessary, for example, if you did not submit any identity documents in connection with the application.

3. Awaiting Investigation

- The Migration Agency has long processing times and you may have to wait a long time to attend an asylum investigation. The waiting period varies from person to person.

4. Summons for Asylum Investigation

- When it is your turn to come for an asylum investigation, a summons will be sent in the mail. The summons specifies when and where you should meet the administrative officer. It is important that you inform the Migration Agency if you move so that it has the correct address when it sends the summons.

5. Asylum Investigation

- The investigator begins by telling you what the conversation is about and what rights and obligations you have. For example, you are obliged to tell the truth and not withhold anything. The investigator and interpreter have a duty of confidentiality.
- If you need a public counsel, the counsel may be involved in the investigation.
- With the help of an interpreter, you can tell us who you are, where you came from, why you are seeking asylum, and what you think will happen to you if you have to return to your home country. You will also receive questions about your family, health, and professional background.
- You are responsible for disclosing all your reasons for applying for asylum and for submitting evidence that you want the Swedish Migration Agency to look at, if you have any.
- The administrative officer writes the minutes of what is said. If you have a public counsel, the counsel can approve the minutes, which are then saved together with all the documents that you have submitted.
- At the end of the investigation, you will have an opportunity to ask questions about the asylum process or anything else that has to do with the contact with the Swedish Migration Agency.

Investigation with children

All children have the right to speak and be listened to. Children who apply for asylum together with their parents have the right to meet the investigator at the Swedish Migration Agency. Children's grounds for asylum must be examined separately – a child may have other grounds for asylum than their parents. When the child's grounds for asylum are investigated, the Migration Agency's investigators must, as much as possible, adapt the investigation to the child's age, maturity, and health. The child has the right to have an adult with him during the investigation. It can be a parent, another guardian, or a public counsel. Unaccompanied minors always have the right to have their guardian with them during the investigation.

6. Decision:

- The decision is based on your story and the documents you have submitted in support of what you have told us about your identity and grounds for asylum, as well as the Swedish Migration Agency's knowledge of the situation in your home country.
- After the decision, you can come to the Swedish Migration Agency, where an administrative officer will inform you whether your application has been approved or not, whether you have received a status declaration, and what happens next.
- The decision is written in Swedish, but you will receive oral information about the decision with the help of an interpreter. You will be informed about what decision the Swedish Migration Agency has made and why it came to the conclusion that that decision was the right one in your case.¹⁷

In addition, an asylum seeker's right to housing, public support, etc., is regulated by the Act on Receiving Asylum Seekers.¹⁸

III. Guidelines

A. Migration Agency Process Framework

The Migration Agency receives annual letters of instruction from the Swedish government.¹⁹ The instruction includes areas where the agency must focus its attention. For example, for 2022, the Migration Agency was tasked with shortening its processing times and focusing on unaccompanied minors.²⁰ In its letter of instruction for 2017, the government tasked the Swedish Migration Agency with setting up a standard framework for its asylum application process.²¹ This framework does not appear to be publicly available at this time.

¹⁷ *Asyl – från Ansökan till Beslut*, Migrationsverket (Oct. 8, 2018), <https://perma.cc/NEL2-9CYU>.

¹⁸ *Lagom mottagande av asylsökande m.fl.* (SFS 1994:137), <https://perma.cc/ZUJ3-SU4Q>.

¹⁹ *Regeringen, Regleringsbrev för Budgetåret 2022 Avseende Migrationsverket* (Dec. 22, 2021), <https://perma.cc/3AP8-CEJT>.

²⁰ *Id.* at 1.

²¹ *Regleringsbrev för budgetåret 2017 avseende Migrationsverket*, Regeringen (Dec. 22, 2016), <https://perma.cc/ZG9S-V2YQ>.

B. Legal Position Guidelines

In determining grounds for asylum, the Migration Agency also employs the use of publicly available issue- or country-specific legal position guides (*rättsliga ställningstaganden*), including guidelines

- for determining an applicant's need for protection because of sexual orientation,²²
- on the ability to receive a passport from Afghanistan,²³
- for determining Afghans' need for protection,²⁴
- for determining the right to derivative protection status in asylum cases,²⁵
- for temporary protection, asylum, and the issue of implementation for persons from Ukraine,²⁶
- for applications for asylum by persons from Eritrea,²⁷ and
- for evaluation of persecution based on a woman's gender.²⁸

As an example, the sexual orientation guideline provides the following steps for determining whether a person needs protection based on his or her sexual orientation:

1. Evaluate whether the applicant has made his or her membership of a group that risks persecution based on factual or attributed sexual orientation, transgender identity, or gender expression probable.
2. Evaluate the situation for the specific group in the applicant's home country using the country specific land information. It should be determined whether the specific group is subject to abuse that in their nature constitute grounds for protection and whether the group can receive an effective protection of local authorities.

²² Migrationsverket, *Rättsligt ställningstagande: Utredning och prövning av den framåtsyftande risken för personer som åberopar skyddsskäl på grund av sexuell läggning, könsöverskridande identitet eller könsuttryckt* (July 20, 2021), <https://perma.cc/3NW4-MWCQ>.

²³ Migrationsverket, *Rättsligt ställningstagande: Afghanska medborgares möjligheter att skaffa pass* (Oct. 11, 2021), <https://perma.cc/9STW-FZ48>.

²⁴ Migrationsverket, *Rättsligt ställningstagande: Prövning av skyddsbehov m.m. för medborgare från Afghanistan* (Apr. 21, 2022), <https://perma.cc/5JSV-RCZN>.

²⁵ Migrationsverket, *Rättsligt ställningstagande: Rätt till derivativ skyddsstatus i asylärenden* (Nov. 17, 2020), <https://perma.cc/3BZF-Y3PA>.

²⁶ Migrationsverket, *Rättsligt ställningstagande: Tillfälligt skydd, asyl och frågan om verkställighet för personer från Ukraina* (Mar. 9, 2022), <https://perma.cc/SR7X-TBWL>.

²⁷ Migrationsverket, *Rättsligt ställningstagande: Prövning av ansökningar om asyl från personer från Eritrea efter Migrationsöverdomstolens avgörande MIG 2017:12* (Apr. 20, 2021), <https://perma.cc/3MEV-SMD3>.

²⁸ Migrationsverket, *Rättsligt ställningstagande: Utredning och bedömning av förföljelse på grund av kön avseende kvinnor* (Apr. 28, 2021), <https://perma.cc/TCJ7-PHTR>. For full list of legal position guidelines, see LIFOS *Migrationsverkets rätts- och landinformationssystem*, Migrationsverket, <https://perma.cc/K3P2-V252>.

3. Evaluate whether the applicant has made previous persecution or treatment in the home country that warrants protection probable.
4. Make a forward-looking assessment of the applicant's personal risk. As in all asylum cases, an individual assessment must be made where the question is made likely that the applicant feels a well-founded fear of being subject to persecution on a return.
5. If the applicant is deemed to be in need of protection due to his affiliation with a group, which risks persecution due to sexual orientation, transgender identity or gender expression must ultimately be an assessment be made by whether there is a government protection on a return to the place of residence or an internal relocation alternative within the home country.²⁹

Applying this guidance together with the country information for Ghana, all persons who make a reliable claim regarding their actual or perceived sexual orientation are afforded asylum based on the prevalent persecution of homosexual and transgender persons in Ghana.³⁰ The Swedish Supreme Migration Court has determined that applicants must make a credible case regarding their sexual orientation in order to be afforded protection. In 2013, it rejected an application from a man claiming to be homosexual who could not provide a consistent story, who had biological children, and who, despite his alleged sexual orientation, had held several high positions in his home country of Nigeria.³¹ The court determined that because the applicant, in light of all the circumstances in the case, had not made his actual or attributed sexuality probable, he could be deported.³²

C. Safe Country Designations

The Migration Agency specifically employs a list of safe origin countries, from which asylum is typically not granted.³³ These countries include Albania, Bosnia Herzegovina, Chile, Georgia, Kosovo, Mongolia, North Macedonia, and Serbia.³⁴ Persons seeking asylum from these countries are presumed to be eligible for protection by the local authorities in their home country, and the Migration Agency may decide to reject the application automatically and immediately. If applicants show serious reasons why authorities in their home country cannot protect them, the Migration Agency may not issue an immediate rejection.³⁵ The basis for determining whether a

²⁹ Migrationsverket, *Rättsligt ställningstagande: Utredning och prövning av den framåtsyftande risken för personer som åberopar skyddsskäl på grund av sexuell läggning, könsöverskridande identitet eller könsuttryckt 4* (July 20, 2021), <https://perma.cc/3NW4-MWCQ>.

³⁰ Migrationsverket, *Landinformaton: Ghana – Politiska strukturer och allmänna fri- och rättig-heter* 14-16 (Sept. 18, 2020), <https://perma.cc/52B9-T8Y7>.

³¹ Migrationsöverdomstolen, MIG 2013:25, <https://perma.cc/227H-K5Z3>.

³² *Id.*

³³ Migrationsverkets, *Migrationsverkets föreskrifter om förteckning över säkra ursprungsländer (MIGRFS 2021:4)*, <https://perma.cc/S757-NPBE>; Migrationsverket, *Säkert Ursprungsland* (July 19, 2021), <https://perma.cc/Q9VG-KAHL>.

³⁴ Migrationsverket, *Säkert Ursprungsland*, *supra* note 33.

³⁵ *Id.*

country qualifies as a safe country of origin is based on whether there is armed conflict, persecution, or torture, and whether constitutional freedoms and rights apply.³⁶

³⁶ Id.

Other Jurisdictions

Canada

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SUMMARY: According to the Immigration and Refugee Protection Act (2001), the initial processing of a migrant seeking asylum at a regular port of entry to Canada involves an eligibility interview. This examination, administered by a Canadian Border Service Agency officer, seeks to acquire information on a migrant before allowing referral for further processing of the refugee status request. The aim of the preliminary inquiry is to ensure that arrivals presenting a risk to public security do not have access to the refugee determination system. This implies that a referral for a hearing at the Refugee Protection Division of the Immigration and Refugee Board does not require a credible fear of persecution.

I. Background

The Canadian Constitution gives the federal and provincial legislatures shared jurisdiction over immigration.¹ This takes the form of specific agreements concluded between the two levels of government.² Nevertheless, provincial governments face restrictions on their respective share of power, which is limited to selection programs negotiated with Immigration, Refugees, and Citizenship Canada (IRCC). Admission into Canada remains a federal competency authorized by the minister of Citizenship and Immigration, and it is governed by the Immigration and Refugee Protection Act (IRPA)³ and its regulations.⁴ Migrants arriving to Canada through an irregular point of entry come under section 3.1 of IRPA.⁵ According to section 27(2) of the Immigrant and Refugee Protection Regulations (IRPR),⁶ they must appear without delay at the nearest port of entry for examination. Migrants may also make a claim while already in Canada.⁷

The examination process begins with a primary series of questions by a border security officer (BSO) at the port of entry. This officer may refer the migrant to a secondary officer for further questioning, beginning the “Immigration Secondary” stage of examination.⁸

* This report was prepared with the assistance of Law Library intern Miranda Lalla.

¹ Constitution Act, 1867 (UK), 30 & 31 Vict., c 3 (U.K.), reprinted in R.S.C. 1985, app II, no 5, § 95, <https://perma.cc/N8UG-H3RV>.

² *Federal-Provincial/Territorial Agreements, Immigr., Refugees & Citizenship Can. (IRCC)*, <https://perma.cc/AHA4-JS3W>.

³ Immigration and Refugee Protection Act (IRPA), S.C. 2001, c 27, <https://perma.cc/VZ4E-B7PW>.

⁴ Immigration and Refugee Protection Regulations (IRPR), SOR/2002-227, <https://perma.cc/YCA2-WK26>.

⁵ IRPA § 3.1.

⁶ IRPR § 27(2).

⁷ *Claiming Asylum in Canada – What Happens*, IRCC, <https://perma.cc/9P2X-2ZZH>.

⁸ *Examination and Entry (Temporary Residents)*, IRCC, <https://perma.cc/66MY-TZPG>.

II. Procedure

A. Port of Entry Examinations

The goal of both the primary and secondary examinations is to “ensure that those who are inadmissible or who seek to contravene the law are prevented from entering Canada and that those who readily comply with the law are allowed to enter.”⁹

The burden of proof in determining admissibility lies on the claimants, who must answer all questions asked to them by a BSO truthfully.¹⁰ Should the examination process lead to a conclusion of admissibility, a refugee claimant will be referred to the Refugee Protection Division (RPD) of the Immigration and Refugee Board (IRB) for further processing.¹¹ The referring BSO will set the date for a hearing in front of the RPD.¹² Only at the time of this hearing will an administrative tribunal evaluate factors such as credibility and fear of persecution, which are not relevant in establishing grounds for admissibility.

B. Primary Examination

Primary examination questions serve to “elicit essential information”¹³ from a migrant as efficiently as possible. They center on basic elements of identification, and officers are bound to certain lines of questioning.

The following are the primary examination questions:

Issue	Question	Rationale
Citizenship	What is your citizenship?	By asking this question first, the BSO can identify a person who may enter Canada by right. It is rare that a person who has a right to enter Canada be referred to Immigration Secondary. If the person is not Canadian, this question enables the BSO to determine whether a passport, a visa or an electronic Travel Authorization (eTA) is required to enter Canada. If the person has a machine-

⁹ IRCC, *ENF 4: Port of Entry Examinations* 28, <https://perma.cc/NDF4-EW6C>.

¹⁰ IRPA § 100(1.1).

¹¹ Id. § 101(3).

¹² Id. § 101(4.1).

¹³ IRCC, *supra* note 9, at 32.

Issue	Question	Rationale
		readable passport, the BSO does not necessarily have to ask about citizenship. A passport reader, however, is no substitute for a good verbal examination.
Residency	Where do you reside?	This question helps the BSO to determine the passport, visa or eTA requirements of foreign nationals. By determining residency, the BSO can eliminate from an Immigration Secondary examination travellers who are persons registered under the Indian Act or permanent residents of Canada and who may enter Canada by right. If the person is a permanent resident, the BSO may ask the supplementary question "How long have you been away?" The BSO at the PIL [primary inspection line] must refer for Immigration Secondary examination all permanent residents who may not comply with the residency obligation of section 28 [of IRPA], which requires permanent residents to reside in Canada for at least 730 days out of every five-year period to maintain their status. The possible loss of permanent resident status under section 46 [of IRPA] can be further explored at a secondary examination.
Intention	What is the purpose of your trip to Canada?	Once the BSO determines that the foreign national may not come into Canada by right, they must establish why the foreign national is coming to

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Issue	Question	Rationale
		Canada. By asking this question, they can identify the need for a referral to the CBSA Immigration Secondary for control purposes (for example, to become a permanent resident, to work, or to study).
Employment	Do you intend to take or seek employment while in Canada?	If the BSO has not yet determined whether the person is coming to Canada to work, this question ensures that employment opportunities for Canadians are protected and that the person will comply with relevant employment regulations.
Length of Stay	How long do you intend to stay in Canada?	BSOs may allow a person to enter Canada for a stay of up to six months and should stamp the passport of a person who is otherwise admissible. A person who is intending to remain in Canada for longer than six months should be referred for a secondary examination.
Identity	What is your name?	If the BSO has any reason to doubt the person's identity, they will ask for the person's name. A comparison can then be made with the person's documents to determine if the name given is the same as the name in the document or, in the case of an aircraft passenger, the same as the name on their declaration form (E311).

Source: IRCC, ENF 4: Port of Entry Examinations 28, <https://perma.cc/NDF4-EW6C>.

1. Reasons for Inadmissibility Based on a Primary Examination

There are multiple grounds for an officer to conclude that a refugee claimant is inadmissible based on a primary examination.¹⁴

- Prior claim deemed ineligible, withdrawn, or abandoned. If a migrant was already determined inadmissible to the country, the claim is ineligible for reference to the RPD. The same applies in instances where a migrant previously withdrew or abandoned a claim.¹⁵
- Convention refugee status attributed by third country to which sending or return is possible. If the claimant has been “recognized as a convention refugee” by a country to which the migrant’s return is possible, they are ineligible for admission to Canada.¹⁶
- Claimant came from designated country.¹⁷ Since coming into effect in 2004, the “Safe Third Country” agreement (STCA) limits the possibility for migrant claimants arriving from the United States to seek refugee status in Canada. This exclusion of eligibility applies to refugee claimants arriving from the United States, considered a country with similar fair trial standards to those guiding Canadian law. However, this policy only takes effect for migrants arriving at regular ports of entry, which are government checkpoints where travelers can be processed.¹⁸ The STCA does not apply to any migrant arriving through an irregular port of entry, i.e., one by which entrance to Canada is not authorized.¹⁹ Migrants who arrive through an irregular port of entry are intercepted by the Royal Canadian Mounted Police and are then turned over to the CBSA for security and eligibility screening.²⁰

2. Other Reasons for Inadmissibility

The basic questions to which BSOs are limited at the initial stage of examination hinder their ability to assess other grounds for inadmissibility that may prove relevant on a case-by-case basis. This issue arises in instances where an officer “doubts the bona fides”²¹ of a person, such as their criminal record, length or intent of stay, and state of health. In these cases, the primary BSO is entitled to adjourn the examination and refer the individual in question to another officer to begin the Immigration Secondary stage, at which point a more rigorous examination can be conducted.

¹⁴ IRCC, *ENF 1: Inadmissibility*, <https://perma.cc/WJW8-2WDT>.

¹⁵ IRPA § 101(1)(c).

¹⁶ Id. § 101(1)(d).

¹⁷ Id. § 101(1)(e).

¹⁸ *Highway/Land Border Office (HWY/B)*, CBSA, <https://perma.cc/55CD-XLWT>.

¹⁹ Stephanie J. Silverman, *Irregular Immigration and Canada*, in *Canadian Encyclopedia* (Nov. 12, 2021), <https://perma.cc/4YA8-ACSN>.

²⁰ *Irregular Border Crossings – What Is Canada Doing?*, Gov’t Can., <https://perma.cc/J3T4-MLC7>.

²¹ *ENF 4: Port of Entry Examinations*, supra note 9, at 29.

C. Secondary Examination

Certain requirements must be met before an officer can proceed to a secondary examination of admissibility.

- Language Assessment: Before the inquiry begins, an officer will proceed to an assessment of the claimant's language abilities, and, if necessary, provide an interpreter for languages other than English or French.²²
- Identification: The officer will ask a claimant for identifying documents (passport, travel document, birth certificate, etc.).²³
- Right to counsel: Typically, the right to legal counsel is not granted to a refugee status claimant at any moment in their primary or secondary examination.²⁴ According to section 10(b) of the Canadian Charter of Rights, the right to counsel arises in instances of detention; the Supreme Court of Canada has held that "routine" admissibility interviews do not qualify as such.²⁵

The following are the secondary examination questions:

Issue	Question	Explanation
Identity	What is your name?	This will enable the BSO to identify the person. The name should be verified against the referral card, identity documents and airline ticket.
Citizenship	What is your country of citizenship?	The BSO should ask this of each person being examined to ensure that the person's stated citizenship matches the identity document they present. This response will help the BSO determine passport, visa, or eTA requirements. If satisfied that the person is a Canadian citizen, the BSO will allow the

²² Id. at 34.

²³ Id. at 37.

²⁴ *Ha v. Canada (Minister of Citizenship & Immigr.)*, 2004 F.C.A. 49 (Can.), <https://perma.cc/T6FT-2A28>.

²⁵ *Dehghani v. Canada (Minister of Emp. & Immigr.)*, [1993] 1 S.C.R. 1053 (Can.), para. 1, <https://perma.cc/6PPG-9E4T>.

Issue	Question	Explanation
		person to enter Canada without further questioning.
Residency	Where do you reside?	Establishing whether a person is a permanent resident may enable the BSO to authorize entry into Canada with minimal further delay. This question will also help the BSO to determine passport, visa, or eTA requirements and to verify whether the person can return to the country of residence if it is different from the country of citizenship. For example, if the person claims to be a resident of the United States but has a passport of another country, the BSO may want to see their Resident Alien card before authorizing entry into Canada.
Intentions	What is the purpose of your trip? How long do you intend to stay in Canada? Where in Canada are you planning to go? Do you intend to look for work in Canada? Do you intend to study in Canada?	If the person is not someone who may enter Canada by right, the BSO should establish the person's intention in seeking entry. Questions such as these may assist in this determination.
Funds Available	May I see your ticket, please? What sources of funds do you have access to while in Canada?	Questions such as these are appropriate for determining if a foreign national possesses the financial means to carry out their intended travel plans and to depart at the end of their authorized time. The BSO should be satisfied that the foreign national will not take unauthorized employment or have to rely on social assistance while in Canada. Additional questioning may be required if foreign nationals cannot

Issue	Question	Explanation
		establish how they will support themselves while in Canada. If they indicate that a friend or relative will support them, it may be advisable to contact the support person to verify this information.
Personal History	What is your occupation? Do you intend to visit anyone in Canada? Do you have any family or friends in Canada?	If the BSO is concerned that a foreign national may not leave Canada at the end of the authorized time, further questioning may be necessary to establish ties to the foreign national's homeland. In these cases, questions concerning the foreign national's family both abroad and in Canada may be appropriate, including questions concerning marital status.
Background	Do you or have you had any health problems? Have you ever been convicted of a crime or an offence? Have you ever been refused entry into or removed from Canada?	The person's past may be relevant to admissibility. Questions such as these may be appropriate for determining whether the person is inadmissible due to ill health, criminality or previous non-compliance with immigration requirements.

Source: IRCC, *ENF 4: Port of Entry Examinations 37*, <https://perma.cc/NDF4-EW6C>.

As stated above, an officer cannot draw a conclusion of inadmissibility regarding security, criminality, or health in a primary interview. The more rigorous line of questioning possible in a secondary examination allows an officer to investigate these reasons for inadmissibility thoroughly, on a case-by-case basis.

- **Security Purposes:** An individual who is deemed a threat to the security of Canadian society, either for violating human or international rights, serious criminality, or organized criminality, will not be granted admission to the country.²⁶ Specific examples of profiles presenting security risks are stated in IRPA. Included in this list are individuals who have

²⁶ IRPA § 101(1)(f).

partaken in committing human rights violations,²⁷ e.g., crimes against humanity, genocide, and war crimes;²⁸ engaged in espionage activities against Canada or its interests;²⁹ overthrown governments;³⁰ committed acts of terrorism;³¹ or belonged to organizations associated with any of these offenses.³²

- Criminality and Serious Criminality: A secondary interview permits an officer's line of questioning to encompass an individual's criminal background and assess any offenses committed prior to arrival at the port of entry. However, as criminal law is determined by national governments, this portion of the interview aims to assess the relative criminality of foreign offenses under Canadian law. An individual will be considered inadmissible on grounds of criminality if a prior offense that was committed on foreign soil would be punishable by way of indictment if committed in Canada.³³ An individual will be considered inadmissible on grounds of serious criminality if a prior offense committed on foreign soil would incur a maximum imprisonment term of at least 10 years if committed in Canada.³⁴ In either case, the officer's decision can be subject to suspension while awaiting a court's decision.³⁵
- Medical Grounds: Refugee status claimants can be denied admission to Canada if they have a medical condition that is likely to endanger public health or security,³⁶ or place an excessive burden on the public healthcare system.³⁷ In order to make this determination, an officer can request a medical examination, ranging in scope from a physical assessment to laboratory tests.³⁸

III. End of Examination

An examination is complete once a final determination on a migrant's admissibility is made.³⁹ If denying admission, a CBSA officer must obtain proof of the migrant's departure, at which point the examination can be considered concluded.⁴⁰ If admission is granted, an officer will allow an

²⁷ Id. § 35.

²⁸ IRCC, *ENF 2: Evaluating Inadmissibility 22*, <https://perma.cc/H3L9-5XFP>.

²⁹ IRPA § 34(1)(a).

³⁰ Id. § 34(1)(b).

³¹ Id. § 34(1)(c).

³² Id. § 34(1)(f).

³³ Id. § 36(2).

³⁴ Id. § 101(2)(a).

³⁵ Id. § 103(1)(b).

³⁶ Id. § 38(1); IRPR § 31.

³⁷ IRPA § 38(1)(c); IRPR § 34.

³⁸ *ENF 2: Evaluating Inadmissibility*, supra note 28, at 24.

³⁹ IRPR § 37.

⁴⁰ Id. § 42.

individual to enter Canada for further processing, by referring their case to the RPD. This referral will put an end to the examination process.⁴¹

IV. In-Canada Claims

A claim for refugee protection can also be made once an individual has already arrived in Canada.⁴² This can be done at a port of entry or at an inland CBSA office. In either case, the process in determining eligibility for referral to the RPD will differ from that of port of entry arrivals. Inland refugee status claimants must follow a specific procedure to have their situation assessed by an inland BSO, involving an online questionnaire as well as an in-person interview and medical assessment. If the BSO determines a claimant is eligible for referral to the RPD, the claimant's file must have a completed "Basis of Claim" (BOC) form that provides substance to the claim.⁴³ However, the content of the BOC form does not play a role in determining referral to the RPD.

A. Requirements for Presentation at an Inland Office

Individuals seeking to claim inland refugee status must present themselves to an inland officer at a port of entry or to an official at a CBSA office.⁴⁴ (Initiating a claim online at the Canadian Refugee Protection Portal has the same effect).⁴⁵ A claimant must not be subject to any of the three categories of removal order – departure, exclusion, or deportation – that would prevent their stay in Canada.⁴⁶

B. Information Gathering

The information-gathering procedure is completed in part by answering a questionnaire on the online portal. Claimants must answer questions regarding their personal history and submit data for biometric collection as well as their identifying documents. Just as a health assessment is typically required in an Immigration Secondary interview for claimants arriving at a port of entry, inland claimants must undergo an Immigration Medical Examination by an IRCC panel physician.

The information provided in the portal will be supplemented by an eligibility interview. During eligibility interviews, the credibility of refugee status claims is not evaluated – the inland CBSA officer's role at this moment is identical to that of a BSO in determining the admissibility of border arrivals.⁴⁷

⁴¹ Id. § 41.

⁴² IRPA § 99(1).

⁴³ *Refugee Claims: Claimant's Guide*, IRB, <https://perma.cc/EN9S-GGEA>.

⁴⁴ *Inland Office (INLAND)*, CBSA, <https://perma.cc/3RF9-AL4H>.

⁴⁵ *Procedures at Inland Offices Regarding in-Canada Claims for Refugee Protection*, IRCC, <https://perma.cc/YH3P-CQNU>.

⁴⁶ *Authorisation to Return to Canada*, IRCC, <https://perma.cc/AY9N-6R56>.

⁴⁷ *In-Canada Claims for Refugee Protection: Interviews*, IRCC, <https://perma.cc/UH55-CU7P>.

In addition to the required personal and medical documentation, the BOC form is essential to the claimant's file. It must be completed and submitted within the portal.⁴⁸ As is the case with border arrival claimants, referral to the RPD does not depend on the content of an individual's claim. For this reason, the BOC form's content does not affect admissibility. The form will only play a role later on, in providing the RPD with background information on the credibility of the claim.

C. BOC Form

Claimants must provide their BOC forms and all other necessary documentation in accordance with the rules of the IRB,⁴⁹ which apply according to the method that claimants choose to present themselves to an inland officer. The regulations state that an individual who submits a claim to an inland officer at a port of entry will provide a BOC directly to the RPD no later than 15 days after the referral of the claim.⁵⁰ An individual who submits a claim to an inland officer other than at a port of entry will provide the BOC to the officer no later than the day on which the claim is assessed.⁵¹

D. Referral to Refugee Protection Division

As in port of entry examinations, the burden of proof in determining admissibility lies with claimants, who must answer all questions asked them by a BSO truthfully.⁵² Should the examination process lead to a conclusion of admissibility, a refugee claimant will be referred to the IRB division of the RPD for further processing.⁵³ The referring BSO will set the date for a hearing before the RPD.⁵⁴ Only at the time of this hearing will an administrative tribunal evaluate factors such as credibility and fear of persecution, which are not relevant in establishing grounds for admissibility.

In the case of an individual who submitted an inland claim at a port of entry, a date will be fixed for a hearing before the RPD within 45 days.⁵⁵ If an individual submitted an inland claim at other than a port of entry, a date will be fixed for a hearing before the RPD within 30 days.⁵⁶

Section 96 of IRPA states that a refugee must have a well-founded claim of persecution.⁵⁷ The Supreme Court of Canada has established that this is a two-factor test involving both subjective

⁴⁸ *Refugee Claims: Claimant's Guide*, supra note 43.

⁴⁹ IRPA § 100(4).

⁵⁰ IRPR § 159.8(1).

⁵¹ Id. § 159.8(2).

⁵² IRPA § 100(1.1).

⁵³ Id. § 101(3).

⁵⁴ Id. § 101(4.1).

⁵⁵ IRPR § 159.9(1)(a)(ii).

⁵⁶ Id. § 159.9(1)(a)(i).

⁵⁷ *Legal Resources: Well-Founded Fear*, IRB, <https://perma.cc/3MLC-YWCW>.

and objective elements.⁵⁸ There must be both the existence of fear within the mind of claimant and a valid basis for that fear. Well-founded fear is a forward-looking claim. A lack of evidence of past persecution does not preclude a successful claim, and conversely, past persecution does not guarantee a successful claim.⁵⁹

E. Inadmissibility

Reasons for inadmissibility are discussed in Section II, above.

⁵⁸ *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689 (Can.), <https://perma.cc/XPZ2-B2FZ>.

⁵⁹ *Legal Resources: Well-Founded Fear*, *supra* note 57.

Turkey

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SUMMARY Under Turkish law, asylum seekers may be eligible for one of four types of protection status: convention refugee, conventional refugee, subsidiary protection, and temporary protection. Persons arriving from Syria following the Syrian Civil War, which constitute a vast majority of the refugee population currently hosted in Turkey, are protected under the temporary protection status. The administrative procedure for the initial registration of asylum seekers and the determination of eventual status is unified for the convention refugee, conventional refugee, and subsidiary protection statuses, while the procedure is different for temporary protection. This report provides a detailed overview of the procedure in place to make the determinations to grant or deny protection status to asylum seekers, with a view to reflect the de facto practice where possible. Other aspects of Turkish refugee law, such as substantive rights and obligations that arise from applicant status or the granting of protection status, and the appeals processes against adverse decisions, are not covered.

I. Background

Turkey hosts the world’s largest population of refugees.¹ A large majority of this population consists of Syrian nationals that sought protection in Turkey as a result of the Syrian Civil War that started in 2011. According to the Ministry of Internal Affairs, by September 23, 2021, 3,714,918 Syrian nationals were biometrically registered as persons under “temporary protection”, a special protection status that is applicable for Syrian nationals and persons seeking protection as part of the mass population movement occurring as a result of the War.² The rest, about 320,000 people, are refugees and asylum seekers that have arrived from other places of the world.³ In 2021, 29,256 applications for asylum were made by persons not subject to the “temporary protection” regime; 21,926 were made by Afghan nationals.⁴

Section II of this report will explain the categories of protection that can be granted to asylum seekers under Turkish law and introduce the relevant legislation. Section III will then provide a detailed overview of the procedure in place to make the determinations to grant or deny protection status to asylum seekers. This report does not cover the substantive rights and obligations that arise from applicant status, or the eventual granting of protection status, that are

¹ UNHCR, *Turkey Fact Sheet, February 2022*, 1 (2022), <https://perma.cc/6GDE-SU6J>.

² *Geçici Korumaya Ait Kayıt İşlemleri* [Registration Procedures for Temporary Protection], Presidency of Migration Management website, <https://perma.cc/26Z7-C9QP>.

³ UNHCR, *supra* note 1.

⁴ *International Protection [Statistics]*, Presidency of Migration Management website (2022), <https://perma.cc/WQB8-S45P>.

not relevant to the status determination procedure. The report also does not cover judicial and administrative appeals procedures that are available against adverse decisions.

II. Legal Framework and Categories of Asylum

A. International Protection

The Turkish legal framework governing the provision of asylum differentiates between two main types of protection: “international protection” and “temporary protection.”

The international protection framework that is set forth by the Law on Foreigners and International Protection (LFIP)⁵ and its implementing regulation, the Regulation on the Implementation of the Law on Foreigners and International Protection (RFIP)⁶ is largely in line with the European Union laws governing the granting and withdrawing of protection to asylum seekers in the EU.

Turkey is a party to the 1951 Convention on the Status of Refugees and its 1967 Protocol; it maintains the geographic limitation allowed by the Convention that limits protection to refugees that seek asylum in Turkey due to “events occurring in Europe.” As a result, the LFIP framework makes a tri-fold distinction between refugee status (that is, refugees that have the full range of rights and protections provided under the Convention, hereinafter referred to as “convention refugees” to avoid confusion), “conditional refugee” status, and subsidiary protection status, rather than the two-fold refugee/subsidiary protection distinction that exists in EU law.

The “conditional refugee” status is granted to asylum seekers that fulfil the eligibility criteria for refugee status as provided by the Convention, but are seeking protection from events occurring outside of Europe. The main difference between the convention refugee status and the conditional refugee status is that the latter is granted protection in Turkey “until resettled in a third country.”⁷ Moreover, the administration may require conditional refugees to reside in a predetermined area, and require them to periodically notify authorities of their whereabouts.⁸ Conditional refugees are not entitled to receive the “refugee travel document” (also known as the “Geneva Passport”) that is issued to convention refugees, and must apply for a single use travel document to leave or re-enter the country.⁹

The LFIP framework otherwise provides conditional refugees a level of protection similar to convention refugees; most importantly, conditional refugees cannot be returned to a place where they may be subjected to torture, inhuman or degrading punishment or treatment or, where their life or freedom would be threatened on account of their race, religion, nationality, membership

⁵ Yabancılar ve Uluslararası Koruma Kanunu (LFIP), Law No. 6458, Official Gazette (O.G.) No. 28615, Apr. 11, 2013, <https://perma.cc/N8CB-VM3X>.

⁶ Yabancılar ve Uluslararası Koruma Kanununun Uygulanmasına İlişkin Yönetmelik (RFIP), O.G. No. 29656, Mar. 17, 2016, <https://perma.cc/Y9ER-MFK9>.

⁷ LFIP art. 62.

⁸ Id. art. 82.

⁹ Id. art. 84.

in a particular social group, or political opinion (the non-refoulement principle), and cannot be detained for the mere fact that they entered into the country to seek asylum, but only exceptionally for reasons such as determination of identity or a serious threat to public order or security.¹⁰

The third type of international protection is the “subsidiary protection” status, which is granted to foreigners who do not qualify as convention refugees or conditional refugees, but if returned to their country of origin or prior residence, will

- a) be sentenced to death or face the execution of the death penalty;
- b) face torture or inhuman or degrading treatment or punishment;
- c) face serious threat to themselves by reason of indiscriminate violence in situations of international or nationwide armed conflict;

and therefore are unable or, for the reason of such threat, are unwilling to avail themselves of the protection of their country of origin or country of prior residence.¹¹ Subsidiary protection terminates when the circumstances in light of which the status had been granted no longer exist or have changed to an extent that the protection is no longer necessary.¹² Whether the changes in circumstances are permanent or temporary must be taken into account in deciding the termination of the status.¹³ Similar to conditional refugees, persons granted subsidiary protection may be required to reside in an area determined by the administration and to notify authorities of their whereabouts.¹⁴ They are also subject to the same rules regarding travel documents.¹⁵ Like convention refugees and conditional refugees, subsidiary protection status holders benefit from the non-refoulement principle.¹⁶

B. Temporary Protection

Article 91 of the LFIP provides the legal basis for the establishment of a special “temporary protection” status to provide protection, outside of the international protection framework, to persons who have arrived in Turkey to seek urgent and temporary refuge as part of a mass movement of people. On this basis, a temporary protection status was created by the Regulation on Temporary Protection (RTP).¹⁷ The RTP authorizes the President of the Republic to declare the scope of temporary protection, indicating in his or her decision

¹⁰ LFIP arts. 4 and 68; RFIP arts. 4 and 96.

¹¹ LFIP art. 63.

¹² Id. art. 85(3).

¹³ Id.

¹⁴ Id. art. 82.

¹⁵ Id. art. 84.

¹⁶ Id. art. 4.

¹⁷ Geçici Koruma Yönetmeliği (RTP), O.G. No. 29153, Oct. 22, 2014, <https://perma.cc/LX9E-RZ58>.

- a) Persons who will be covered under temporary protection;
- b) Effective date of temporary protection and its duration if considered necessary;
- c) Conditions for extending and ending of temporary protection;
- ç) Whether or not temporary protection will be implemented country-wide or in a specific region;
- d) Matters in respect to which the [Migration Board] may take a decision and follow;
- e) Matters regarding decisions on limitation or suspension of admission into our country within the scope of temporary protection under Article 15 [of the RTP];
- f) Other subjects considered necessary.¹⁸

While the President of the Republic is authorized to thus determine the scope of the temporary protection regime, the Presidency of Migration Management (Presidency) is mandated with issuing the individual decisions on whether or not a person is eligible for temporary protection.¹⁹ Temporary protection may be terminated by the proposal of the Ministry of Internal Affairs and the decision of the President of the Republic.²⁰ The President of the Republic may decide

- a) To fully suspend the temporary protection and to return persons benefiting from temporary protection to their countries;
- b) To collectively grant on persons benefiting from temporary protection an [international protection] status provided that they satisfy the conditions of such status, or to assess the applications of those who applied for international protection on an individual basis;
- c) To allow persons benefiting from temporary protection to stay in Turkey subject to conditions to be determined within the scope of the Law.²¹

Currently, the RTP applies to all “citizens of the Syrian Arab Republic, stateless people and refugees, who have arrived in Turkey since April 28, 2011, whether individually or as part of a mass movement of people, due to events unfolding in Syria” and “citizens of the Syrian Arab Republic who have arrived in Turkey since April 28, 2011 due to events unfolding in Syria and, having crossed to the Aegean islands [i.e. Greek islands in the Aegean Sea] after March 20, 2016 via irregular ways, were readmitted to Turkey and have made an application for protection.”²²

¹⁸ RTP art. 10(1).

¹⁹ The recently restructured Presidency of Migration Management (Presidency) was previously called the “Directorate General of Migration Management” (DGMM). The Presidency is headquartered in the capital Ankara and organized under the Ministry of Internal Affairs. The restructuring was done through the amendment of Presidential Decree No. 4; all references made to the DGMM in prior legislation are now considered to refer to the Presidency. Presidential No. 4. O.G. No. 30479, July 15, 2018 (as amended by Presidential Decree No. 85, O.G. No. 31643, Oct. 29, 2021), provisional article 1, ch. 13, <https://perma.cc/ZU5E-PVKP> (in Turkish).

²⁰ RTP art. 11(1).

²¹ Id. art. 11(2).

²² LFIP provisional article 1.

Temporary protection status holders benefit from the principle of non-refoulement.²³

III. Administrative Process

An overview of the administrative practice relating to the initial status determination for international protection and temporary protection is provided below. The information largely reflects the de jure procedure; information on de facto practices are provided where found to be reported.²⁴

A. Overview of Administrative Practice Regarding International Protection Applications

1. Initial Registration Phase

Following the termination of the UNHCR's registration procedure in September 2018,²⁵ the first phase of obtaining international protection has now become the registration of the application for international protection by a Provincial Directorate of Migration Management (PDMM). PDMMs are set up in all 81 provinces of Turkey and are organized under and directed by the Presidency. In practice, an asylum seeker can apply for international protection in two main forms: by physically appearing in person on the premises of a PDMM, where the asylum seeker may lodge an application for himself and on behalf of his family members,²⁶ or by making the application at a border point of entry or while under detention after being intercepted for irregular presence.²⁷

An asylum seeker who wishes to apply for international protection while in the territory of Turkey must approach the PDMM. While the law does not provide a deadline for making the

²³ RTP art. 6.

²⁴ The most comprehensive source of observer commentary on the practices of Turkish governmental agencies in administering the international protection and temporary protection systems that is publicly available appears to be the annual reports of the European Council on Refugees and Exiles (ECRE), which was originally drafted by Refugee Rights Turkey and since 2017 have been researched and drafted by an independent consultant and edited by the ECRE. According to its website, "ECRE is an alliance of 105 NGOs across 39 European countries. It was established in 1974 and has grown rapidly in recent years, reflecting European civil society's continued commitment to the right to asylum." *Our Work*, ecre.org, <https://perma.cc/7MRT-L3Q4>. Refugee Rights Turkey (MHD) is an Istanbul-based non-governmental organization. See *Our History & Work*, mhd.org.tr, <https://perma.cc/5DS2-W5NN>.

²⁵ Prior to September 10, 2018, in accordance with a coordination agreement with the Turkish Directorate General of Migration Management, UNHCR and its implementing partner, the SGDD-ASAM (a Turkish non-governmental organization, <https://perma.cc/XN8A-B47J>) conducted the initial registration of asylum seekers and directed them to satellite provinces where they awaited their assessment interview. See Section III(A)(2) *infra*. See UNHCR, *United Nations High Commissioner For Refugees (UNHCR) Will End Registration Process In Turkey On 10 September 2018* (Information leaflet, 2018), <https://perma.cc/H5NS-LM9D>. With the termination of the UNHCR's registration activities, the PDMMs have become responsible of conducting the initial registration of persons seeking international protection.

²⁶ Defined as the spouse, minor children, and dependent adult children. LFIP art. 3(1)(a).

²⁷ RFIP art. 67.

application from the date of entry, it must be made “within a reasonable time” to avoid sanctions for irregular entry and stay, and the reasonableness will be determined on a case-by-case basis.²⁸

In practice, it appears that not all PDMMs accept applications for registration and the PDMMs that do not accept applications direct the asylum seeker to travel to a PDMM that is located in a “satellite province” within 15 days. Failure to apply to the PDMM in the appointed “satellite province” in 15 days results in the cancellation of the application, and the PDMM does not provide transportation assistance; however it is reported that the PDMM directs the asylum seeker to an NGO that would provide assistance.²⁹ “Satellite provinces” are provinces which are open to registration of applications and in which the asylum seeker is required to reside while their application is being processed.³⁰ It appears that the “opening” or “closing” of a province (i.e. their becoming a “satellite province”) is not governed by publicly available standards, and is, to at least some extent, within the discretion of the PDMM of the province.³¹ A PDMM in a “closed” province to which an application was made may exceptionally permit the asylum seeker to remain in the province.³²

The asylum seeker who approaches a PDMM receiving applications with a request to make an application is first given a registration interview. In the interview, the asylum seeker is asked his or her country of origin, the reasons for leaving, the events that happened to the asylum seeker that have led him or her to apply for international protection, his or her method and route of entry into Turkey and the tools and methods of transportation used, and whether the asylum seeker has previously applied for or benefitted from international protection in any other country.³³ Documentation related to the information provided is collected and filed.³⁴ The asylum seeker is under the obligation to provide correct information and all relevant documentation of which he or she is in possession; the asylum seeker’s person and belongings may be searched to ensure the asylum seeker is abiding with the obligation.³⁵ The asylum seeker may provide the information in a language in which he or she is able to express themselves.³⁶ The information provided by the asylum seeker is entered into the electronic system and read back for the asylum seeker to make corrections.³⁷ Finally, the registration form is printed out to be hand-signed by the applicant who is given a copy.³⁸

²⁸ Id. art. 65(4)-(5).

²⁹ ECRE, *supra* note 24, at 39.

³⁰ RFIP art. 3(1)(hh).

³¹ ECRE, *supra* note 24, at 79.

³² RFIP art. 66(3).

³³ LFIP art. 69(4).

³⁴ Id.

³⁵ Id. art. 69(2).

³⁶ RFIP art. 65(3).

³⁷ Id. art. 70(6).

³⁸ Id. art. 70(7).

Upon registration of the application, the asylum seeker is issued an International Protection Application Registration Document (IPARD), which indefinitely grants the right to remain in the country without a residence permit unless revoked.³⁹ It has been reported that in practice, asylum seekers who are directed by a PDMM to register at another PDMM located in a satellite province are not issued an IPARD or a temporary document, and therefore are at risk of being detained while in transit for irregular presence before they can reach the PDMM that would register their application and issue a IPARD.⁴⁰

If the request for application is made at the border or while the asylum seeker is in detention for irregular presence, the law requires the authorities to notify the relevant PDMM “at once.”⁴¹ It has been reported that persons who are detained in a pre-removal detention center, who were intercepted in transit or in an attempt to enter Turkey, and who request to make an application are released from detention (presumably if there are no other reasons for detention) and given a document (“T6 form”) informing them of the termination of their administrative surveillance and requesting them to report to a certain PDMM, which may or may not be the PDMM of the province in which they were previously residing (if detained for irregular presence).⁴² The asylum seeker is then required to report to the assigned PDMM and undergo the registration process explained above.

Following the registration interview, the PDMM may decide that the asylum seeker’s application is inadmissible. The PDMM must assess the admissibility of the application in the initial registration phase, but an application may be held to be inadmissible at any stage in the process during which grounds for inadmissibility are detected.⁴³ Article 72 of LFIP provides the following grounds on which an application may be found to be inadmissible:

- (a) subsequent applications that do not put forward a different reason;
- (b) applications submitted by persons who were processed previously as family members and have signed a waiver relinquishing the right to make a personal application where the application of such person is (i) made during the pendency of the original application without a justifying reason or (ii) made after the original application was rejected, without providing any additional reasons;
- (c) applications made by persons who are determined to have come from a country where they have been already recognized as a refugee or where it is determined that the asylum seeker had an opportunity to benefit from sufficient and effective protection including the principle of non-refoulement; and
- (c) applications of asylum seekers who have come from a safe third country where he or she has or could have made an application for international protection that would

³⁹ Id. art. 71(1).

⁴⁰ ECRE, *supra* note 25, at 40.

⁴¹ RFIP art. 65(5).

⁴² ECRE, *supra* note 24, at 42.

⁴³ RFIP arts. 73-74.

result in protection conforming to the standards of the Convention Relating to the Status of Refugees and its 1967 Protocol.⁴⁴

2. Assessment Phase

After the application of the asylum seeker is recorded by the PDMM, the application is put in process to proceed to the assessment phase to determine whether the asylum seeker is eligible for international protection. The first step of the evaluation phase is the evaluation interview. The LFIP provides that the assessment interview must take place within 30 days of the initial registration of the application by a PDMM. Applications that meet certain criteria are subject to accelerated assessment, and the assessment interview for such applications must take place within three days of the initial registration.⁴⁵

Applications are subject to the accelerated assessment process in cases where the applicant

- a) has never mentioned elements that would require international protection when presenting reasons while lodging the application;
- b) misled the authorities by presenting untrue or misleading information or documents or, by withholding information or documents that might negatively impact the decision;
- c) has destroyed or disposed of identity or travel documents in bad faith in order to make determination of identity or citizenship difficult;
- ç) has been placed under administrative detention pending removal;
- d) has applied solely to postpone or prevent the implementation of a decision that would lead to his/her removal from Turkey;
- e) poses a public order or public security threat or, has previously been removed from Turkey on such grounds;
- f) repeats the application after the [initial] application is considered to have been withdrawn.⁴⁶

The PDMMs have the discretion to decide whether an application is subject to the accelerated assessment procedure.⁴⁷ An application may be referred to processing under the accelerated assessment procedure at any point of the assessment phase by the PDMM or the Presidency.⁴⁸ Decisions on applications subject to accelerated assessment must be finalized within five days of the accelerated assessment interview.⁴⁹ If it is determined during the accelerated assessment that the application would require a longer time to be assessed properly, it may be removed from the

⁴⁴ LFIP art. 72.

⁴⁵ Id. art. 81(1).

⁴⁶ LFIP art. 79.

⁴⁷ RFIP art. 80(4).

⁴⁸ Id. art. 80(5).

⁴⁹ LFIP art. 79(2).

accelerated track.⁵⁰ Applications of unaccompanied children may not be subject to the accelerated assessment process.⁵¹

Applications that are not processed under the accelerated assessment are processed in accordance with the standard assessment procedure. As mentioned above, the law requires that the assessment interview take place within 30 days of the initial registration of the application under the standard assessment procedure. The assessment interview must be performed by personnel that are trained in interview techniques, refugee law, human rights law, and have background information concerning the country of origin of the asylum seeker.⁵² The format and content of forms that are used in the assessment interview process are determined by the Presidency and, in practice, are not made public.⁵³

The interviews are done privately and in person in a space that is equipped with necessary technical equipment and which offers privacy and security sufficient to enable the applicants to express themselves in the best way possible.⁵⁴ The asylum seeker may be accompanied in the interview by the following persons: (a) his or her family members (if the applicant gives consent); (b) the applicant's lawyer as an observer, upon written request of the applicant; (c) an interpreter; (d) subject to the availability and need determined by the administration, a psychologist, pedagogue, child development specialist, social worker, or other relevant specialist; and (e) the parents or legal guardian if the applicant is a minor.⁵⁵ Before beginning the interview, the interviewer must inform the applicant of the following:

- a) His/her role and duty, and the roles and duties of those persons who are present in the interview,
- b) The proceeding process related to the application,
- c) The purpose of the interview,
- ç) The importance for the applicant to deliver accurate information related to his/her application,
- d) The applicant's obligation to submit his/her documents, if there is any,
- e) That the interview may be recorded in audio and/or video format,
- f) That the statements provided by the applicant and any kind of information and documentation related to him/her will be kept confidential, and will not be disclosed to the authorities of the country of origin or to the third persons without his/her consent,
- g) Other issues to be determined by the [Presidency].⁵⁶

⁵⁰ Id. art. 79(3).

⁵¹ Id. art. 79(4).

⁵² RFIP art. 81(2).

⁵³ See id. art. 81(5).

⁵⁴ Id. arts. 82(1) and 84.

⁵⁵ Id. art. 82.

⁵⁶ Id. art. 85.

Additional interviews may be scheduled if necessary, subject to the same rules on the format.⁵⁷ Following the interview, the interviewer prepares an interview report, which may be updated should additional interviews be conducted.⁵⁸ The interviewer must include his or her own opinions and assessment of the case in the report.⁵⁹ Following the completion of the assessment interview, the asylum seeker, and his or her family members that are processed under the same application, are issued an International Protection Applicant Identification Card, which allows the holder to remain in Turkey without a residence permit.⁶⁰

Following the interview process, the application is assessed by migration specialists employed in the Presidency, or if authorized by the Presidency, in the PDMs, and the case is decided.⁶¹ The law provides that the application should be decided on within six months of the initial registration, however the time limit is not binding and the law only requires the applicant to be notified if the application was not able to be decided on within the initial six months: the law does not provide a binding time limit.⁶² Cases where applicants have waited years for a decision have been reported.⁶³

The decisions are rendered on a personal basis and cover all family members if the family members were processed under the same application.⁶⁴ The application must be assessed holistically, taking into account the general conditions of the applicant's country of citizenship or country of former residence, and the personal circumstances of the applicant.⁶⁵ If it is assessed that protection may be provided for the applicant against the threat of persecution or serious harm in a certain region of the country of citizenship or former residence, and if the applicant is in a condition to safely travel to and settle in that region of the country, it may be decided that the applicant is not in need of international protection.⁶⁶ The decision is then served to the applicant or his or her attorney.⁶⁷ Negative decisions must include the reasons and legal grounds for rejection.⁶⁸ If the applicant is not represented by an attorney, the applicant is notified of the consequences of the decision and the method and time limit for appealing it.⁶⁹ Applicants whose applications were successful are issued an International Protection Status Holder Identification

⁵⁷ Id. art. 88.

⁵⁸ Id. art. 89(1)-(3).

⁵⁹ Id. art. 89(2).

⁶⁰ Id. art. 90.

⁶¹ LFIP art. 78(1); ECRE, *supra* note 24, at 43.

⁶² LFIP art. 78.

⁶³ See ECRE, *supra* note 24, at 43.

⁶⁴ LFIP art. 78(2).

⁶⁵ Id. art. 78(3).

⁶⁶ Id. art. 78(4).

⁶⁷ Id. art. 78(6).

⁶⁸ Id.

⁶⁹ Id.

Card, which grants the right to remain in Turkey.⁷⁰ Following a positive decision, the substantive rules relevant to type of international protection granted (convention refugee, conditional refugee, or subsidiary protection) will apply to the asylum seeker.

B. Overview of Administrative Practice Regarding Provision of Temporary Protection

As explained in Section II above, the temporary protection status is established outside of the international protection framework and is governed by the RTP. As the RTP's objective is to set up a protection regime that will apply to persons that are part of a mass population movement, it provides for a more simplified registration procedure, and does not include a substantive assessment stage.

The temporary protection procedure starts with admission into the territory. The Ministry of Interior Affairs is authorized to determine the border points of entry from which foreigners subject to the temporary protection regime may enter the country.⁷¹ Upon entry, the entrants' persons, their belongings, and vehicles are subjected to search by security forces, and their personal identification information and date and place of entry are noted in an official report.⁷² The entrants are then in the shortest time possible transferred to police units, which will take the entrants to the closest "transfer center."⁷³ Persons subject to the temporary protection regime who are already present in the territory and voluntarily apply to the provincial governorate for temporary protection are directed to transfer centers.⁷⁴ Those who are intercepted before voluntary application are taken to transfer centers escorted by the police.⁷⁵ Armed persons who enter the country seeking temporary protection and armed persons who deserted the armed forces that they were a part of to seek temporary protection are disarmed by security forces upon entry and are transferred to transfer centers that are different than those hosting civilians.⁷⁶

The RTP foresees that the initial registration of temporary protection applicants is to be done by the GDMM [now the Presidency] in transfer centers.⁷⁷ However, the RTP provides that the registration may be done by provincial governorates if the capacity of transfer centers is insufficient. In practice, it appears that as of 2020, the PDMMs (which are part of the provincial governorates) are formally tasked with making the initial registration of temporary protection seekers.⁷⁸

⁷⁰ RFIP, art. 93(1).

⁷¹ RTP art. 17(1).

⁷² Id. art. 17(3)-(4).

⁷³ Id. art. 17(4).

⁷⁴ Id. art. 17(7).

⁷⁵ Id.

⁷⁶ Id. art. 18.

⁷⁷ Id. art. 19(1).

⁷⁸ ECRE p. 146.

During registration, the temporary protection applicant is obligated to provide correct identification information and, if in possession, to submit verifying documents, and to cooperate fully with the officials.⁷⁹ Copies of the submitted documentation will be entered in the person's file to be kept with confidentiality and the originals are returned to the protection applicant.⁸⁰ Protection applicants who are observed to be a potential risk to public health may be subjected to a health check and health measures may be taken, if found to be necessary.⁸¹

The Presidency is authorized to determine the format and content of the temporary protection registration form.⁸² It appears that the form is not made public. During registration, the statements of the protection applicant about their own identity are taken to be true unless proven otherwise, if they cannot submit verifying documents.⁸³ Photographs, fingerprints, and other biometric data are collected and registered and cross-checked with the central electronic database.⁸⁴ Following registration, if not found to be ineligible under article 8 of the RTP, the temporary protection applicant is issued a Temporary Protection Identification Document which enables the holder to access rights and benefits available to temporary protection status holders.

C. Persons ineligible for temporary protection

Article 8 of the RTP provides for a list of persons ineligible for temporary protection, or whose temporary protection status must be cancelled if discovered after registration. These are the following:

- a) Those with respect to whom there are serious reasons to consider that they are guilty of actions defined in Article 1 (F) of the Convention Relating to the Status of Refugees dated 28/7/1951 amended by the 1967 Protocol Relating to the Status of Refugees;
- b) Those regarding whom there are reasons indicating that he or she has committed cruel acts outside of Turkey for any reason whatsoever;
- c) He or she has taken part in the commission of crimes or acts as specified in subparagraphs (a) and (b) of this paragraph or incited others to commit such crimes or acts;
- ç) Those who took part in armed conflicts in his or her country and did not permanently cease such activities;
- d) Those who are identified as having committed, planned to commit, or participated in acts of terrorism;
- e) Those who are considered to be a threat to the public due to being convicted of a serious crime and those who are considered to pose danger to national security, public order, or public security;

⁷⁹ RTP art. 19(3).

⁸⁰ Id. art. 19(4).

⁸¹ Id. art. 20.

⁸² Id. art. 21(2)(b).

⁸³ Id. art. 21(2)(c).

⁸⁴ Id. art. 21(2)(ç).

- f) Those who have previously committed a crime or crimes for which an imprisonment sentence would have been given if committed in Turkey and have left their country of origin or country of residence in order to avoid punishment for that crime;
- g) Those who are convicted of crimes against humanity by international courts;
- ğ) Those who have committed one of the crimes laid down in Chapter Seven of Part Four of the Turkish Penal Code No. 5237 of 26/9/2004 [i.e. Crimes against state secrets and espionage].

The determination that a person falls under one or more of these categories shall be made by the Presidency but this authority to determine may be transferred partially or fully to the provincial governorates.⁸⁵ Persons who are found to be ineligible for protection under article 8 can be hosted in temporary accommodation centers before being removed from the country without being subject to administrative detention, on humanitarian grounds.⁸⁶ Upon request, their family members may also be hosted with them.⁸⁷

⁸⁵ RTP art. 8(2).

⁸⁶ RTP. art. 8(3).

⁸⁷ Id.

United Kingdom

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SUMMARY The United Kingdom (UK) has extensive provisions in place to provide protection to persons seeking asylum while protecting the public from individuals who may exploit the asylum system. The application process for asylum seekers starts at the border. A fast-track process has been developed to help reduce the extensive backlog of asylum cases, which allows certain applications to be rejected upon receipt if the individual is from a country deemed safe by the UK. For all other claimants, a decision is made by caseworkers from the Home Office on the well-established criteria of whether the individual has a well-founded fear of persecution or other harm.

I. Introduction

The United Kingdom of Great Britain and Northern Ireland, consisting of England, Wales, Scotland, and Northern Ireland, has recently undergone a period of devolution with the creation of a Scottish Parliament, a Welsh Assembly, and a Northern Ireland Assembly (currently suspended) that can legislate in certain areas. Citizenship and nationality are not devolved areas, however, and thus remain the responsibility of the Parliament.¹ The secretary of State for the Home Department (a member of the British executive branch) and the department, commonly referred to as the Home Office, have responsibility for almost all matters relating to immigration, including asylum, nationality, and border control laws.

Since 1891, the common law of the UK has provided that “no alien has any right to enter this country except by leave of the Crown.”² The Aliens Restriction Act 1914,³ the Aliens Restriction (Amending) Act 1919,⁴ and the rules and orders made under these acts gave the common law rule a statutory basis and formed the restrictions on immigration.

¹ “Nationality” refers to the status of those individuals who are British citizens, British subjects with the right of abode in the United Kingdom and who are thus outside the scope of the United Kingdom’s immigration control, and citizens of British Overseas Territories. In this report, the term “citizenship” is used to include nationality. These terms are commonly interchanged. Nationality has been defined as a person’s international identity that demonstrates they belong to a state, as evidenced by a passport. Citizenship has been considered to be more “a matter of law determined by the facts of a person’s date and place of birth, those of their parents and the application of the provisions of the relevant legislation,” and is concerned with the rights, duties, and opportunities that a person has within a state, such as voting rights, military service, and access to healthcare. Laurie Fransman, *Fransman’s British Nationality Law* 12 (2d ed. 1998).

² *Musgrove v. Chun Teeong Toy* [1891] A.C. 272, followed in *Schmidt v. Home Office* [1969] 2 Ch. 149.

³ Aliens Restriction Act 1914, 4 & 5 Geo. 5, c. 12, <https://perma.cc/Y5FY-YFL5>.

⁴ Aliens Restriction (Amendment) Act 1919, c. 92, <https://perma.cc/4G8L-2SXH>.

The Immigration Act 1971,⁵ and the Immigration Rules made under it,⁶ contain the current statutory regime governing immigration in the UK. The Immigration Rules are a fluid set of rules that change frequently. To change them, a Statement of Changes to the Immigration Rules is laid before Parliament; these changes enter into law within 40 days unless Parliament objects to them.⁷ The law requires individuals who are not British or Commonwealth citizens with the right of abode in the UK (or members of the European Economic Area)⁸ to obtain leave to enter the UK from an immigration officer upon their arrival.⁹

II. Government Departments Responsible for Asylum

The Home Office is the government department with primary responsibility for almost all aspects of immigration, including asylum, nationality, and border control laws. Various directorates within the Home Office handle specific items relating to these areas of responsibility.¹⁰

UK Visas and Immigration, acting on behalf of the home secretary and minister for immigration, is responsible for processing asylum applications.¹¹ The Border Force is responsible for immigration and customs controls at UK ports and airports.¹² Immigration Enforcement ensures that immigration laws are complied with, such as the prohibition on working without proper authorization.¹³ Immigration Enforcement also works to remove individuals who do not have permission to remain in the UK.

III. Asylum Laws and Policy

Asylum is the term given to the protection offered to individuals who are fleeing persecution in their own country.¹⁴ As a rule, asylum seekers may apply for asylum only after entering the UK. Asylum applicants who meet the application criteria receive refugee status. Claimants who do not receive refugee status may still be granted leave to remain in the UK for humanitarian or

⁵ Immigration Act 1971, c. 77, <https://perma.cc/4KSN-42ZB>.

⁶ Immigration Rules, pt. 1, <https://perma.cc/7CN3-QU72>.

⁷ Immigration Act, 1971, c. 77, § 3(2).

⁸ The European Economic Area consists of the Members of the European Union plus Norway, Iceland, and Liechtenstein. *European Economic Area (EEA) /Relations with the EU, EFTA*, <https://perma.cc/J28V-YUQ3>.

⁹ Immigration Act, 1971, c. 77, § 3; Immigration Rules, pt. 1, ¶ 7.

¹⁰ *Home Office*, Gov.uk, <https://perma.cc/A99D-FU9F>.

¹¹ *About Us – UK Visas & Immigration*, Gov.uk, <https://perma.cc/Y6UP-23ZF>.

¹² *About Us – Border Force*, Gov.uk, <https://perma.cc/J6MK-AM75>.

¹³ *About Us – Immigration Enforcement*, Gov.uk, <https://perma.cc/7UKV-H83B>.

¹⁴ Melanie Gower, *House of Commons Libr. Briefing Paper No. SN03186, Constituency Casework: Asylum, Immigration and Nationality 6* (May 13, 2015), <https://perma.cc/E9DJ-BN8P>.

other reasons if there is a real risk that they would suffer serious harm after returning to their country of origin.¹⁵

The policy surrounding immigration and asylum, and law governing them, are highly complex. The 1971 Act makes it an offense for aliens to enter the UK without obtaining leave to enter.¹⁶ Officials have authority to attach conditions to such leave, and failing to observe these conditions is a prosecutable offense.¹⁷ The UK's national laws are subject to the European Convention on Human Rights.¹⁸ In addition, they must comport with the United Nations Refugee Convention.¹⁹

The government attempts to balance the needs of those seeking genuine protection with preventing the entrance of those wishing to come to the UK for undesirable purposes. These “undesirable purposes” are broad, and individuals may be refused entry into the UK if an Immigration Officer has information that

[an] applicant's presence in the UK is not conducive to the public good because of their conduct, character, associations or other reasons (including convictions which do not fall within the criminality grounds).²⁰

The secretary of state may exclude individuals from the protection of the Refugee Convention in certain circumstances. The burden of proof is on the secretary to show that the claimant falls within an exclusion.²¹

IV. Asylum Procedure

While the UK withdrew from the EU on January 31, 2020, it has transposed a number of EU directives into its national legislation. Thus, the EU Procedures Directive is in place in the UK through the Asylum (Procedures) Regulations 2007 and the Immigration Rules.²²

¹⁵ Convention and Protocol Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 137 (Refugee Convention) & Jan. 31, 1967, 606 U.N.T.S. 267 (Protocol), <https://perma.cc/7DRU-VNS4>; Home Office, *Humanitarian Protection: Version 5.0* (Mar. 7, 2017), <https://perma.cc/SU82-4TQV>.

¹⁶ Immigration Act 1971, c. 77, § 24.

¹⁷ Id. § 24(1)(b)(ii).

¹⁸ European Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, 213 U.N.T.S. 222, <https://perma.cc/TE86-JJDK>. The European Convention on Human Rights was incorporated into the national legislation of the United Kingdom by the Human Rights Act 1998, c. 42, <https://perma.cc/4TNR-N54G>.

¹⁹ Refugee Convention, *supra* note 15.

²⁰ Immigration Rules, pt. 9, ¶ 9.3.1, <https://perma.cc/E27S-LD5X>.

²¹ Refugee or Person in Need of International Protection (Qualification) Regulations 2006, SI 2006/2525, <https://perma.cc/7556-WCRJ>, and the Immigration Rules, *id.* ¶ 9.5.1.

²² Council Directive 2005/85/EU, <https://perma.cc/BQ3P-EVTD>; Asylum Procedures Regulations 2007, SI 2007/3187, <https://perma.cc/Q7VT-7XRJ>; Immigration Rules.

A. Entry Procedures

Biometric information must be provided upon entry to the UK. There is no time limit for an asylum seeker to make a claim, but the government notes that applications should be made upon arrival in the UK, or as soon as individuals believe it is unsafe to return to their country, and that applications are more likely to be denied if there is a delay in submitting them.²³

Upon making an application for asylum, claimants meet with an immigration officer to be screened, where they are photographed, fingerprinted, and have their information checked against databases to help prevent those with a known criminal background from entering the UK.²⁴ The UK stopped participating in the Dublin III Regulation on December 31, 2020, when it withdrew from the EU. As a result, it no longer has access to the Eurodac fingerprint database, but it continues to determine whether cases are inadmissible, such as if the person was present in a safe third country, or fraudulently using historical Eurodac records and evidence collected during the registration process.²⁵ At this time, claimants complete a Preliminary Information Questionnaire,²⁶ and they have an initial interview with the immigration officer, where they are asked why they are claiming asylum.²⁷

B. Decision-Making Criteria

Applications for asylum and humanitarian protection claims are considered on an individual, objective, and impartial basis.²⁸ Personnel examining applications for asylum act on behalf of the secretary of state and must have knowledge of the “relevant standards applicable in the field of asylum and refugee law.”²⁹ The Asylum Instructions issued by the secretary of state provide guidance to caseworkers making decisions as to whether to grant or deny a claim of asylum.³⁰

The determining factor for receiving asylum is whether the individual meets the criteria contained in article 1 of the Refugee Convention and Protocol.³¹ This article defines a refugee as a person who,

owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion, is outside the country of his

²³ *Claim Asylum in the UK: Overview*, Gov.uk, <https://perma.cc/RL6T-4XGH>.

²⁴ Asylum and Immigration Appeals Act 1993, c. 23, § 3, <https://perma.cc/SA4S-49D2>.

²⁵ *Inadmissibility: Safe Third Country Cases (Accessible)* Gov.uk (May 11, 2022), <https://perma.cc/N5MR-HPN6>; *Claim Asylum in the UK: Overview*, Gov.uk, <https://perma.cc/RL6T-4XGH>.

²⁶ Home Office, *Preliminary Information Questionnaire*, <https://perma.cc/9QMJ-44HX>.

²⁷ *Claim Asylum in the UK*, Gov.uk, <https://perma.cc/QE68-M77S>.

²⁸ Immigration Rules, pt. 11, ¶ 339J, <https://perma.cc/57YY-RYQS>.

²⁹ Id. ¶ 339HA.

³⁰ *Asylum Decision Making Guidance (Asylum Instructions)*, Gov.uk, <https://perma.cc/M68S-4E2T>.

³¹ Refugee or Person in Need of International Protection (Qualification) Regulations 2006, reg. 2.

nationality, and is unable to or, owing to such fear, is unwilling to avail himself of the protection of that country.³²

A principle within the Convention is not to return refugees to a territory where they are at risk of persecution or serious harm. Asylum claims are considered with “anxious scrutiny” to ensure “that just and fair decisions are made and protection granted to those who need it.”³³ The UK implements a number of criteria when determining whether to grant refugee status. An application for asylum will be granted the secretary of state is satisfied that

- (i) they are in the United Kingdom or have arrived at a port of entry in the United Kingdom;
- (ii) they are a refugee, as defined in regulation 2 of The Refugee or Person in Need of International Protection (Qualification) Regulations 2006;
- (iii) there are no reasonable grounds for regarding them as a danger to the security of the United Kingdom;
- (iv) having been convicted by a final judgment of a particularly serious crime, they do not constitute a danger to the community of the United Kingdom; and
- (v) refusing their application would result in them being required to go (whether immediately or after the time limited by any existing leave to enter or remain) in breach of the Refugee Convention, to a country in which their life or freedom would be threatened on account of their race, religion, nationality, political opinion or membership of a particular social group.³⁴

An act is considered to be one of persecution where it is

sufficiently serious by its nature and repetition as to constitute a severe violation of a basic human right, in particular a right from which derogation cannot be made under Article 15 of the Convention for the Protection of Human Rights and Fundamental Freedoms; or an accumulation of various measures, including a violation of a human right which is sufficiently severe as to affect an individual in a similar manner as specified in (a).³⁵

Acts that constitute persecution include acts of physical, mental or sexual violence; administrative, judicial or police measures that are discriminatory or implemented in a discriminatory manner; disproportionate or discriminatory prosecution or punishment; denial of judicial redress that results in a disproportionate or discriminatory punishment; prosecution or punishment for refusing to perform military service in a conflict if that would involve crimes or other specified acts.³⁶

When assessing whether the claimant has a well-founded fear of persecution, or faces a real risk of serious harm, it is not necessary for the claimant to possess the characteristic that has caused

³² Refugee Convention art. 1.

³³ Home Office, *Asylum Policy Instruction: Assessing Credibility and Refugee Status, Version 9.0* ¶1.2 (Jan. 6, 2015), <https://perma.cc/6ULH-FPY3>.

³⁴ Immigration Rules, pt. 11, ¶ 334.

³⁵ Refugee or Person in Need of International Protection (Qualification) Regulations 2006, reg. 5(1).

³⁶ Id. reg. 5(2).

the alleged persecution, it simply needs to be attributed to them.³⁷ The caseworker must be satisfied that

- a) the claimant has manifested a subjective fear of persecution or an apprehension of some future harm, and
- b) objectively, there is a reasonable degree of likelihood (or a real risk) of the claimant's fear being well-founded on return to the country of origin.³⁸

Only if the claimant meets all the criteria will the UK grant asylum.³⁹ The decision on an application is in writing and includes the reasons for the application's rejection and details on how to challenge the decision.⁴⁰ Persons who have been notified that they have been refused asylum may be liable to removal as illegal entrants, removal under the powers provided in section 10 of the Immigration and Asylum Act 1999, or deportation.⁴¹

When considering any asylum claim, all material factors to substantiate the claim, including a statement of the reason for the claim and any documentation relating to identity, nationality, and other countries the individual has resided in, must be submitted to the secretary of state.⁴² For asylum applications, information should not be disclosed or obtained from the alleged persecutor that would "jeopardise the physical integrity of the applicant and his dependents, or the liberty and security of his family members still living in the country of origin."⁴³

Caseworkers reviewing an asylum application on behalf of the secretary of state consider a number of factors to determine whether the claimant has been, or may be, subject to persecution or serious harm, including

- the facts relating to the country of origin, including its laws and regulations,
- statements and documents from the claimant,
- the claimant's position, background, and personal circumstances,
- whether the claimant's activities since leaving the country of origin were undertaken for the purposes of creating an asylum or humanitarian protection claim, and
- whether the claimant should have reasonably been able to obtain protection in another country or other state of citizenship.⁴⁴

³⁷ Id. reg. 6(2).

³⁸ *Asylum Policy Instruction: Assessing Credibility and Refugee Status, Version 9.0*, supra note 33, at ¶ 6.6, citing Sivakumuran, R (on the application of) v Secretary of State for the Home Department [1987] UKHL 1, <https://perma.cc/GFZ7-VLVL>.

³⁹ Immigration Rules, pt. 11, ¶ 328.

⁴⁰ Id. ¶ 336.

⁴¹ Id. ¶ 338.

⁴² Id. ¶ 339I.

⁴³ Id. ¶ 339IA.

⁴⁴ Id. ¶ 339J.

In cases where the claimant's statements are not supported by documentary or other evidence, proof is not necessary if the claimant has

- made a genuine effort to substantiate the claim,
- provided a satisfactory explanation regarding the lack of materials,
- made coherent and plausible statements that do not contradict information relevant to the case, made the claim at the earliest possible time, and
- been able to establish general credibility.⁴⁵

Applications for asylum will be rejected if the claims have not been adequately substantiated, or if the claimants have not established themselves as eligible for asylum or humanitarian protection. claims may also be rejected if they fail to disclose facts that are material to their case or would otherwise assist the secretary of State in establishing the facts of their case.⁴⁶ Failing to report to a designated place to be fingerprinted or to complete a questionnaire, or failing to comply with a condition to report to an immigration officer for examination are also grounds for the secretary of state to reject an asylum application. If the claimant leaves the UK without proper authorization at any time during the application process or fails to complete any steps of the process, such as not attending an interview without a reasonable explanation, the application is considered withdrawn.⁴⁷

C. Substantiating an Asylum Claim

The guidance notes "[t]he burden of substantiating a claim lies with the claimant, who must establish to the relatively low standard of proof [a reasonable degree of likelihood,⁴⁸] that they qualify for international protection."⁴⁹ The Home Office notes that the standard of proof is identical to that of a reasonable likelihood, or a real possibility or a real risk and that the reason for the low standard is "because of what is potentially at stake – the individual's life or liberty – and because asylum seekers are unlikely to be able to compile and carry dossiers of evidence out of the country of persecution."⁵⁰ When making a decision on a claim, the Home Office states that

[t]he question to be asked is whether, taken in the round, the caseworker accepts what he or she has been told and the other evidence provided. In practice, if the claimant provides evidence that, when considered in the round, indicates that the fact is 'reasonably likely', it can be accepted. A caseworker does not need to be 'certain', 'convinced', or even

⁴⁵ Id. ¶ 339L. See also *Asylum Policy Instruction: Assessing Credibility and Refugee Status, Version 9.0*, supra note 33.

⁴⁶ *Asylum Policy Instruction: Assessing Credibility and Refugee Status, Version 9.0*, supra note 33.

⁴⁷ Immigration Rules, pt. 11, ¶ 333C.

⁴⁸ *Asylum Policy Instruction: Assessing Credibility and Refugee Status, Version 9.0*, supra note 33, ¶ 5.2.

⁴⁹ Home Office, *Asylum Interviews, Version 8.0*, at 36 (June 3, 2021), <https://perma.cc/4NU2-NCT9>.

⁵⁰ *Asylum Policy Instruction: Assessing Credibility and Refugee Status, Version 9.0*, supra note 33, ¶ 5.2.

‘satisfied’ of the truth of the account—that sets too high a standard of proof. It is enough that it can be ‘accepted’.⁵¹

D. Interview

The interview procedure for asylum claimants is contained in paragraphs 339NA to 339ND of the Immigration Rules. The Immigration Rules provide that claimants should be given the opportunity of a personal interview with a “representative of the Secretary of State who is legally competent to conduct such an interview”⁵² before any decision is made on their application for asylum. There are circumstances under which an application may be determined without an interview, such as when

- (i) the Secretary of State is able to take a positive decision on the basis of evidence available;
- (ii) the Secretary of State has already had a meeting with the applicant for the purpose of assisting them with completing their application and submitting the essential information regarding the application;
- (iii) the applicant, in submitting their application and presenting the facts, has only raised issues that are not relevant or of minimal relevance to the examination of whether they are a refugee, as defined in regulation 2 of the Refugee or Person in Need of International Protection (Qualification) Regulations 2006;
- (iv) the applicant has made inconsistent, contradictory, improbable or insufficient representations which make their claim clearly unconvincing in relation to having been the object of persecution;
- (v) the applicant has submitted a subsequent application which does not raise any relevant new elements with respect to their particular circumstances or to the situation in their country of origin;
- (vi) the applicant is making an application merely in order to delay or frustrate the enforcement of an earlier or imminent decision which would result in their removal;
- (vii) it is not reasonably practicable, in particular where the Secretary of State is of the opinion that the applicant is unfit or unable to be interviewed owing to enduring circumstances beyond their control; or
- (viii) the applicant is an EU national whose claim the Secretary of State has nevertheless decided to consider substantively in accordance with paragraph 326F above.⁵³

The Home Office has published a 67-page guidance document designed to aid workers responsible for conducting interviews.⁵⁴ The policy objective of the interview is to provide authorities with the opportunity to gather evidence about the facts, and assess the credibility, of a claim that allows them to reach an informed decision about whether or not to grant or deny asylum status.⁵⁵ The guidance notes that “[t]he asylum interview is an important part of the

⁵¹ Id., citing SM (Section 8: Judge’s process) Iran [2005] UKAIT 00116, <https://perma.cc/DV3P-SMEJ>.

⁵² Immigration Rules, pt. 11, ¶ 339NA.

⁵³ Id. ¶ 339NA(i-viii).

⁵⁴ *Asylum Interviews, Version 8.0*, supra note 49.

⁵⁵ Id. at 36.

asylum process because it is the main opportunity for the claimant to provide relevant evidence about why they need international protection.”⁵⁶

1. *Prior to the Interview*

Claimants are able to request a male or female interviewer in advance of the interview and, if the authorities cannot meet the request, the interview should be rescheduled.⁵⁷ Interviews are typically conducted with the claimant either alone or in the presence of their legal representative or adviser, who must meet regulatory requirements. In exceptional cases with advance notice, a friend or other companion may be present to provide emotional, medical or spiritual support,⁵⁸ but care should be taken to ensure the friend or companion is not a trafficker or smuggler.⁵⁹

An interpreter in the claimant’s preferred language should be present for the interview, but if one is not available, an interpreter should be provided who speaks the same language the claimant used at the screening interview, unless the claimant’s understanding of that language is not sufficient for the interview.⁶⁰

2. *Requirements for the Interviewer*

Prior to conducting the interview, the interviewer must read the claimant’s reasons for the asylum claim contained in the screening form, the preliminary information questionnaire, witness statements, and any other relevant information contained in the case file, such as visa application records and country reports or country guidance.⁶¹ The interviewer must verify the claimant’s identity by requesting to see their Application Registration Card and visually check to ensure the photograph and information matches those of the individual at the interview and, if required, check the fingerprints of the claimant against those held by the Home Office.⁶²

While, as noted above, the burden is on the claimant to demonstrate they qualify for international protection, the interviewer is required to share responsibility in the interview and assist the claimant by establishing what elements of the claim are pertinent and encouraging the claimant to disclose relevant information,⁶³ as the claimant may not always be aware what aspects are relevant to their claim.⁶⁴ Each interview must be conducted on an individualized basis, and the

⁵⁶ Id. at 8.

⁵⁷ Id. at 19.

⁵⁸ Family members, those seeking asylum themselves, those with a personal interest in the outcome of the claim, and those engaged in providing legal advice to the claimant are excluded from accompanying the claimant in an interview in all circumstances. Id. at 21.

⁵⁹ Id. at 20.

⁶⁰ Id.

⁶¹ Id. at 27.

⁶² Id. at 29 & 31.

⁶³ Id. at 37.

⁶⁴ *Asylum Policy Instruction: Assessing Credibility and Refugee Status, Version 9.0*, supra note 33, ¶ 1.2.

background and circumstances of the claimant must be taken into account along with any concerns that are relevant to their dependents or former dependents.⁶⁵

3. *Contents of the Interview*

The claimants' nationality and background should be established, and their personal experiences and verifiable details examined.⁶⁶ The interviewer must assess the interview objectively and impartially and be aware of any values, beliefs, prejudices or views that could affect their objectivity "to avoid them influencing the conduct of the interview."⁶⁷ The interviewer must focus on the facts that are key issues in the asylum claim and "avoid unnecessarily detailed, prolonged, and exhausting interviews."⁶⁸

The guidance provides examples of what the interviewer should look for under each of the bases for asylum claims. In cases of individuals who are claiming asylum based upon a religious conversion, to be credible, the guidance states, "something so potentially life-changing should not be perfunctory, vague, or ill-thought out."⁶⁹

In cases where gender identity or sexual orientation forms the basis of the claim, the guidance states that claimants are not required to prove their sexual orientation or gender identity; however, the claimant is responsible for establishing that "it is reasonably likely that they are [of a particular sexual orientation or gender identity] or will be perceived to be."⁷⁰ In these cases, the claimant's self-identification of their sexual orientation or gender identity is considered the starting point, and this is subject to an assessment based on all the facts, circumstances, and evidence of the case.⁷¹

In claims that depend upon the risk caused by another person's actions or circumstances, such as a family member, the interviewer should understand that the claimant's knowledge might be limited, but seek to obtain as much information about the person as the claimant knows to understand why the connection is dangerous.⁷²

Claimants who have been tortured must be asked when, where, how, and who inflicted the torture, the impact of the torture on them, and whether they have any physical scars or ongoing physical or mental effects caused by the torture. Although interviewers are not qualified to judge what caused a claimant's scars, they should consider them with all the evidence and advise the

⁶⁵ *Asylum Interviews, Version 8.0*, supra note 49, at 37.

⁶⁶ Id.

⁶⁷ Id.

⁶⁸ Id.

⁶⁹ Id. at 45-46.

⁷⁰ Id. at 47.

⁷¹ Id. at 48.

⁷² Id.

claimant that a medical report can be obtained to assess the scars.⁷³ Claimants who are victims of gender-based persecution must not be asked about the details of the acts themselves, but they should be asked for information about the events that led up to the acts and the circumstances of the case.⁷⁴

The interviewer must ask the claimant about how and when they obtained any documents from overseas and how they are relevant to their claim.⁷⁵ It is the claimant's responsibility to show that an overseas document can be relied upon (the Tanveer Ahmed principle)⁷⁶ and provide a translation when necessary.⁷⁷ There is no need for the claimant to show that documents from the UK, such as expert reports, can be relied upon, but the guidance notes that these "should not be accepted uncritically."⁷⁸

4. *Assessing Credibility*

The Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 requires those making a decision on an asylum claim to take into account the claimant's credibility and whether the claimant failed to make an asylum claim in a safe third country.⁷⁹ The interviewer must explore any issues of the claimant's credibility, which can be used later when making a balance assessment on all the evidence.⁸⁰ In cases where there are potentially significant adverse credibility findings, the interviewer must provide the claimant with the opportunity to explain or clarify any contradictions or significant inconsistencies in their claim and fill in any areas where there are gaps or missing information.⁸¹ The guidance from the Home Office for caseworkers assessing credibility highlights the importance of addressing contradictions or inconsistencies in the interview, stating that failing to do so can result in the decision being flawed if the claim is refused on credibility grounds.⁸²

The guidance provides examples of when a claim may be credible. For example, a claimant should be deemed to have a credible claim for torture if, despite a lack of medical evidence of past torture, other indicators are present. Another example is a case of political activity where the claimant does not have independent evidence of participation in the activity but "the account of political events is reasonably detailed, consistent, and plausible."⁸³ The caseworker must

⁷³ Id. at 51.

⁷⁴ Id. at 51.

⁷⁵ Id. at 32.

⁷⁶ Tanveer Ahmed [2002] UKIAT 000439, <https://perma.cc/F58T-LU8M>.

⁷⁷ *Asylum Interviews, Version 8.0*, supra note 49, at 32.

⁷⁸ Id. at 32.

⁷⁹ Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, c. 19 § 8, <https://perma.cc/35WR-5XYA>.

⁸⁰ Id.

⁸¹ Id.

⁸² Id.

⁸³ *Asylum Policy Instruction: Assessing Credibility and Refugee Status, Version 9.0*, supra note 33, at ¶ 5.2.

look at all the evidence in the round, to try and grasp it as a whole and to see how it fits together and whether it is sufficient to discharge the burden of proof. Some aspects of the evidence may themselves contain the seeds of doubt. Some aspects of the evidence may cause doubt to be cast on other parts of the evidence. . . . Some parts of the evidence may shine with the light of credibility. The fact-finder must consider all these points together; and . . . although some matters may go against and some matters count in favour of credibility, it is for the fact-finder to decide which are the important, and which are the less important features of the evidence, and to reach his view as a whole on the evidence as a whole.⁸⁴

Indicators that a claimant is credible include detail and specific knowledge, consistency in all the evidence provided as well as the independent information available to the caseworker, medical evidence, and whether the claimant's account is plausible. In cases where there are inconsistencies, the Guidance on credibility states that "the benefit of doubt" should be given to accept or reject a material fact when the evidence is not sufficient to support the facts. The benefit of the doubt should be given where all five criteria in paragraph 339L of the Immigration Rules are met, and should be considered where one or more of the criteria are met, "bearing in mind the relatively low threshold applicable to asylum cases."⁸⁵

Where aspects of the person's statements are not supported by documentary or other evidence, those aspects will not need confirmation when all of the following conditions are met:

- (i) the person has made a genuine effort to substantiate his asylum claim or establish that he is a person eligible for humanitarian protection or substantiate his human rights claim;
- (ii) all material factors at the person's disposal have been submitted, and a satisfactory explanation regarding any lack of other relevant material has been given;
- (iii) the person's statements are found to be coherent and plausible and do not run counter to available specific and general information relevant to the person's case;
- (iv) the person has made an asylum claim or sought to establish that he is a person eligible for humanitarian protection or made a human rights claim at the earliest possible time, unless the person can demonstrate good reason for not having done so; and
- (v) the general credibility of the person has been established.⁸⁶

The Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 requires caseworkers to consider whether the claimant has engaged in any behavior that the authorities think is designed or likely to conceal information; mislead authorities; or obstruct or delay the handling, resolution, or making of a decision on the claim.⁸⁷ The act specifies that the following behavior:

- shall be treated as designed or likely to conceal information or to mislead –
- (a) failure without reasonable explanation to produce a passport on request to an immigration officer or to the Secretary of State,
 - (b) the production of a document which is not a valid passport as if it were,

⁸⁴ Id.

⁸⁵ Id. ¶ 5.6.5.

⁸⁶ Immigration Rules, pt. 11, ¶ 339L.

⁸⁷ Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, c. 19, § 8.

- (c) the destruction, alteration or disposal, in each case without reasonable explanation, of a passport,
- (d) the destruction, alteration or disposal, in each case without reasonable explanation, of a ticket or other document connected with travel, and
- (e) failure without reasonable explanation to answer a question asked by a deciding authority.⁸⁸

As noted above, caseworkers must provide the claimant with the opportunity to explain any behaviors from this section.⁸⁹

5. *Records of the Interview*

The Immigration Rules state that interviews are recorded if the secretary of state considers it necessary to process the asylum claim. The guidance from the Home Office provides that “it is Home Office policy to audio record asylum interviews unless the exemptions policy applies.”⁹⁰ The claimant must be informed in advance that the interview will be recorded and a copy should be made available to them.⁹¹ Claimants may submit a request in advance of the interview, along with their reasons, that the interview not be recorded.⁹² Claimants must be provided with a transcript of their interview,⁹³ and in addition, the written report about the interview.⁹⁴

6. *End of the Interview*

At the end of the interview, the interviewer must ask the claimant the following four questions:

- is there anything you would like to add to what you have told me today?
- are there any other reasons not previously mentioned why you wish to remain in the UK, including personal circumstances that you would like to be taken into consideration?
- have you understood the questions and is there anything we have discussed today which you would like clarified?
- will you submit the further evidence as agreed within a defined timescale?⁹⁵

Decisions may be made on the claim after the interview, although claimants are able to submit additional evidence after the interview.⁹⁶ The interviewer may also request more evidence from

⁸⁸ Id. § 8(3).

⁸⁹ *Asylum Policy Instruction: Assessing Credibility and Refugee Status, Version 9.0*, supra note 33, ¶ 5.5.

⁹⁰ *Asylum Interviews, Version 8.0*, supra note 49, at 27.

⁹¹ Immigration Rules, pt. 11, ¶ 339NE.

⁹² *Asylum Interviews, Version 8.0*, supra note 49, at 27.

⁹³ Id. at 28.

⁹⁴ Immigration Rules, pt. 11, ¶ 339NC.

⁹⁵ *Asylum Interviews, Version 8.0*, supra note 49, at 56-57.

⁹⁶ Id. at 56.

the claimant, although the guidance states the interviewer must consider the low standard of proof required and not “put claimants under pressure to produce further ‘evidence’ which they are unlikely to be able to obtain, or where attempting to do so could place themselves and other family members at risk.”⁹⁷ In cases where the interviewer finds information after the interview that contradicts the claimant’s statement, the guidance states it is good practice for the claimant and Home Office to clarify this before making a decision, rather than waiting until the appeal stage.⁹⁸

7. Interviewing Children

There is a legal obligation to safeguard and promote the welfare of children in the UK, and any interaction with children must consider this obligation.⁹⁹ Guidance, which has been partially redacted, has been published that sets out principles that must be followed. It requires those who meet with children to

- treat them in the same way as a British child,
- have the child’s best interests as a primary consideration,
- not discriminate against children,
- process asylum claims involving children in a timely manner, and
- identify children who might be at risk from harm.¹⁰⁰

While the best interests of a child should be considered, this is not a factor in determining whether a fear of persecution is well founded.¹⁰¹

For families with children under the age of 18, the principal claimant should be interviewed and provide the reasons for the children’s need for asylum, but the authorities have the discretion to interview any dependent “where is it appropriate and relevant to do so.”¹⁰² The Home Office has stated that children should not be present for the interview of their parents “to protect the claimant’s own interests (they may be reluctant to reveal difficult information with a child present) and those of the child, bearing in mind the statutory duty to safeguard and promote the welfare of children.”¹⁰³ Childcare is available at some sites, and interviews can be rescheduled in cases where childcare is not available.¹⁰⁴

⁹⁷ Id. at 57.

⁹⁸ Id. at 58.

⁹⁹ Borders, Citizenship and Immigration Act 2009, c. 11, § 55, <https://perma.cc/H5LJ-GUTF>.

¹⁰⁰ Home Office & UK Border Agency, *Every Child Matters* (Nov. 2009), <https://perma.cc/H7WE-3HHK>.

¹⁰¹ *Asylum Interviews, Version 8.0*, supra note 49, at 8.

¹⁰² Id. at 15.

¹⁰³ Id.

¹⁰⁴ Id.