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# UNHCR Guidelines on the Resubmission of Resettlement Cases

## 1. Introduction

Resettlement is pursued by UNHCR under its Mandate to obtain protection and a durable solution for refugees who are in need of resettlement.<sup>1</sup> Resettlement, however, is neither a refugee's right nor a State's obligation. When a State rejects a refugee's case for resettlement, or when UNHCR withdraws the case, the cases are not automatically resubmitted by UNHCR to another State. When a refugee is rejected or his or her case is withdrawn, the case is reviewed prior to resubmission as described in these guidelines.

In order to ensure global consistency and transparency in UNHCR's decisions with regard to the resubmission of resettlement cases, as well as to assist in managing expectations of refugees, these guidelines:

- outline the various considerations in determining whether a particular case should be resubmitted for resettlement to another State following a rejection on or withdrawal of an earlier submission of the case; and
- provide a framework for ensuring that cases are thoroughly reviewed before resubmission, that any concerns raised in previous rejections or withdrawals have been investigated and addressed, and that the needs for resettlement remain compelling.

## 2. Terminologies

### ***Rejection***

In the context of these guidelines a case is considered rejected following:

- a) a State's formal action to reject a case after receiving the submission from UNHCR and fully considering the case according to its policy and/or legal requirements for resettlement admissibility;
- b) a State's refusal to consider a case submitted by UNHCR;
- c) a State's return of a submission to UNHCR without having taken any decision; or
- d) a State's indication that a case that has been submitted by UNHCR is likely to be rejected, or a State's invitation to UNHCR to withdraw a case before the issuance of a decision.

UNHCR encourages States to provide a formal rejection, rather than refuse to consider a case or return a submission to UNHCR without a decision. In the interests of fairness and transparency, UNHCR should not withdraw a resettlement submission before the issuance of a decision unless exceptional circumstances merit otherwise.

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<sup>1</sup> In certain cases UNHCR may pursue resettlement for stateless persons and non-refugee dependent family members.

A case is **not** considered rejected if a State requests additional information on a case, or if a State suspends its processing of a case pending receipt of additional information from UNHCR or another source.

### **Reconsideration**

In exceptional cases, UNHCR may ask the State which has rejected a case to reconsider the case, for example, when there are strong family linkages, or in the event that the factors that led to the State's decision to reject the case are subsequently addressed or no longer exist. UNHCR may also advocate with an individual resettlement country if a particular pattern of rejections is detected that might have adverse effects on the resettlement programme as a whole, or is inconsistent with the previous pattern of decision making.

Refugees are entitled by some resettlement States to request a formal reconsideration of the rejection of their case. Cases for which reconsideration has been requested are nevertheless subjected to the same attention and review as a rejected case.

### **Withdrawal**

UNHCR may choose to withdraw a case before the State in question has rendered a decision. Some of the following circumstances, *inter alia*, may prompt UNHCR to withdraw a case:

- a) new circumstances (family links, quota reallocation, impending selection mission, etc.) may have come to light encouraging resubmission to a State other than the State of original submission;
- b) where UNHCR may feel that the case requires a more rapid decision than that particular State can give, and elects to withdraw the case with a view to re-submitting it elsewhere. Examples include where urgent protection problems suddenly arise requiring upgraded priority or swift resolution and departure of a case pending with a resettlement country, or where the State's decision-making, including security clearance, is significantly delayed;
- c) where a State's "split decision" threatens to separate dependent family members and the decision is made to resubmit the entire family to a new resettlement State;
- d) new circumstances may have come to light suggesting that submission for resettlement is currently inappropriate, such as when the reasons for submission substantially change or cease to exist (for example, fundamental changes in the country of origin, family circumstances, or protection needs);
- e) the refugee disappears and can no longer be contacted in the country of refuge;
- f) the refugee expresses a desire to no longer pursue resettlement for one or another reason;
- g) in exceptional circumstances, as a sanction resulting from substantiated allegations of fraud.<sup>2</sup>

In all of these cases, such a decision by UNHCR is considered to be a withdrawal and not a State's rejection. These guidelines are applicable to above situations (a), (b) and (c) as long as circumstances on which cases were withdrawn prevail. For above situations (d), (e), (f), and (g) no resubmission is warranted unless new circumstances arise requiring resubmission consideration.

### **Resubmission**

For the purpose of these guidelines, the term "resubmission" refers to the submission of a case for resettlement to a second State after the case has been:

- rejected by another State; **or**
- withdrawn from consideration by UNHCR.

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<sup>2</sup> See UNHCR, *Policy and Procedural Guidelines: Addressing Resettlement Fraud Perpetrated by Refugees*, March 2008, <http://www.unhcr.org/refworld/docid/47d7d7372.html>

### 3. Counselling and provision of information

Refugees should be informed about any significant developments affecting their case, including rejections by States and whether their case may be resubmitted. If reasons have been provided by the declining State, refugees should be provided with these reasons. If a State has issued a decision letter addressed to an individual refugee, the refugee should be given the original, with a copy kept on file with UNHCR noting the date the letter was handed to the refugee. If emails, lists, or letters are addressed to UNHCR, these should not be given to refugees to protect confidentiality. UNHCR continues to advocate for the provision of individual letters.

The counselling should include a realistic assessment of the likelihood of successful reconsideration by the resettlement State, and an evaluation of the possibility of resubmitting to another resettlement State while awaiting outcome of the reconsideration.

### 4. Assess the grounds for rejection

All rejections should first be examined to establish if the decision is prejudicial or non-prejudicial. Where reasons are not provided with the notice that a submission has been rejected, UNHCR staff should seek a more detailed explanation (preferably in writing) from the resettlement State. This information is a key element in evaluating whether to resubmit a case and the extent of review required for resubmission.

#### ***Non-prejudicial decisions / No reason given***

A State's rejection is considered non-prejudicial if:

- no reason or justification is provided;
- the rejection is due to reasons specific to its particular immigration laws, which are not relevant to UNHCR's resettlement considerations. For example, a State may deny resettlement based on restrictive domestic legislation such as "integration potential", HIV status, or family size;
- the State refuses to consider the case or returns the case to UNHCR with no decision taken, with indications that this refusal or return is related to country-specific criteria.

#### ***Prejudicial decisions***

A State's rejection is considered prejudicial if:

- the reasons for rejection call into question UNHCR's determination of resettlement need and/or eligibility, such as *inter alia* concerns relating to credibility, the RSD assessment or eligibility for refugee status, or the family composition;
- the reasons for rejection relate to security concerns by States;
- UNHCR is requested to withdraw a case under similar circumstances, for instance if the State indicates that the case will likely be rejected on prejudicial grounds;
- the State refuses to consider the case or returns the case to UNHCR with no decision taken, with indications that this refusal or return is on prejudicial grounds.

### 5. Review process required in cases considered for resubmission

The following steps should be taken prior to resubmission of cases that were rejected or withdrawn:

- i) conduct an initial review to evaluate the viability and appropriateness of resettlement; and,
- ii) where circumstances warrant, conduct an in-depth review (including an interview); then,
- iii) select a resettlement country for resubmission; and
- iv) resubmit the case.

### **(i) Initial review: Evaluate the viability and appropriateness of resettlement**

All resettlement cases should be reviewed in order to determine: a) that resettlement remains both appropriate and viable; and b) if in-depth review and re-interview are required.

For many cases, a dossier review is sufficient; however, an interview may be required to reconfirm the circumstances of the case.

Generally, UNHCR resubmits a rejected case only after the following conditions are reconfirmed:

- a) the applicant is a refugee who remains eligible for resettlement according to UNHCR policy; and
- b) resettlement remains the most appropriate and viable option for the individual;
  - Viability: while an individual may remain eligible for resettlement according to UNHCR policy, resubmission may no longer be a viable option for a variety of reasons relating to the specific profile, its submission history, and/or the limited availability of places;
  - Appropriateness: Conversely, resettlement options may still be available, but the circumstances that led to the original decision to submit the case have changed and resettlement is no longer needed or appropriate.

A review may determine that a resettlement is either **not viable or not appropriate** for the refugee(s) in question. In such cases, this decision should be fully documented in the refugee's file. The refugee should be appropriately **counselled** as to the status of her / his case and clearly advised that **UNHCR will not be resubmitting the case** to other resettlement countries.

### **(ii) In-depth review: changed circumstances, elapsed time, prejudicial rejections**

A case must undergo an in-depth review if:

- the case review indicates that the family composition, circumstances of the case, or need for resettlement have changed;
- if significant time (more than 6 months) has passed since the last submission;
- the case was rejected prejudicially.

The Principal Applicant and his/her family members and dependants should be re-interviewed to check all aspects of the case, including: family composition; circumstances of the case; eligibility for refugee status; and need for resettlement. For concerns relating to the refugee status determination including exclusion, the case should be referred back to the Protection Unit for a thorough review. If the case received a prejudicial rejection, UNHCR must be satisfied that the concerns raised have been addressed.

Any additional information, clarification, or documentation provided should be reflected in an amended or corrected Resettlement Registration Form (RRF).

### **(iii) Select a resettlement country for resubmission**

Selection of a resettlement country for resubmission should reflect the following:

- emergency and urgent cases should receive highest priority for submissions and resubmissions;
- the case should be submitted to the resettlement country most likely to accept it based on that country's policies and priorities, with consideration of any family links to resettlement State(s);
- staff should select a country which will process the submission within a time period appropriate to the priority of the case;
- if the previous submission was made under a "group resettlement methodology", preference should be given to a State which accepts submissions using the same methodology, if possible.

### **Multiple rejections by States**

While there is no specific limit on the number of possible resubmissions of a case, UNHCR should be realistic about remaining resettlement prospects and the likelihood of acceptance. Any prejudicial rejection should trigger an in-depth review of the case, and if a case is rejected a second time for prejudicial reasons, this in-depth review should, where possible, be conducted by a UNHCR officer not previously involved in the resettlement submission. It is important to address the refugee's expectations, and to address their needs in light of lowered prospects for resettlement. If no viable options for resubmission remain, potential alternative solutions should be explored including voluntary repatriation and local integration in the country of refuge. UNHCR may provide advice and/or assist the applicant to apply under a regular migration programme (e.g. skilled migration). Or, in exceptional cases and in consultation with the Resettlement Service at Headquarters, UNHCR may approach a State that does not have a standing refugee resettlement programme, but which may be prepared to consider a resettlement submission.

### **(iv) Resubmission**

Before the case is resubmitted, the following actions should be undertaken:

- the RRF should be amended to reflect all additional information, clarification, or documentation provided;
- the signature page should be updated and re-signed if it is dated more than six months previous;
- the submission priority should be re-evaluated, and an appropriate submission priority (emergency, urgent, normal) chosen to reflect the resettlement needs of the case.

Resubmissions should follow established procedures for approval and submission, *proGres* should be updated, and the refugee should be informed that his or her case has been resubmitted.

## **6. Sharing case submission history with States**

UNHCR will resubmit the case only when it is satisfied that a case has gone through an appropriate reviewing process, that any concerns raised in previous rejections have been investigated and addressed, and that the needs for resettlement remain compelling. Reasons for rejection provided by resettlement States are key elements to enhance this reviewing process, and for this reason, UNHCR will continue to advocate with the resettlement countries the need to provide reasons for rejection of cases.

In the past, UNHCR limited sharing case submission history with resettlement States upon resubmission, to cases where UNHCR believed it was in the interest of the refugee, or where there were exceptional or sensitive circumstances. This approach was adopted as a safeguard against the concern that providing information about previous rejections might unfairly prejudice consideration of the case on its merits.

However, with enhanced reviewing processes in place to ensure that cases are viable and resubmission is appropriate, UNHCR has altered its position and will now systematically share the case submission history with States. Sharing the case submission history with States reinforces UNHCR's assessment that the case has continued resettlement needs and is therefore beneficial to the refugees being resubmitted. Resettlement States' consideration of a resettlement case is bound by their respective regulations and should in principle not be prejudiced by other States' previous decisions. Systematic sharing of case submission history with resettlement States fosters mutual trust and transparency between resettlement States and UNHCR and supports the joint aim of providing a prompt resettlement solution to the individual case concerned.

If an individual has been previously submitted by UNHCR to another resettlement country and rejected or their case been withdrawn by UNHCR from another country, this information will be included in the Section 7 “Additional Remarks” of the RRF as of July 2012. The concerned refugees must be informed that this information will be included in the RRF and provide their agreement to share this information with the resettlement States when signing the declaration form of the RRF.

Note that while UNHCR can provide the case submission history, it is not in a position to systematically provide reasons for rejections at this stage, since the majority of resettlement countries are yet to provide UNHCR with this information or the information is insufficiently detailed. However, where UNHCR believes it is in the interest of the refugee, UNHCR may provide reasons for rejections if available on a case by case basis. For example, for cases where close family members reside in a resettlement country that previously rejected the case, it may be prudent and beneficial to the refugee to mention in the RRF what efforts were taken by UNHCR to explore resettlement in the country where family members reside and the reason why the case was rejected.

There may be other exceptional or sensitive circumstances where UNHCR may decide to provide reasons for rejections. For example, when resubmitting cases that have been rejected multiple times, UNHCR may need to reinforce its assessment and rationale for resubmission referring to the reasons for previous rejections if known. Such circumstances need to be carefully assessed on a case by case basis and the Resettlement Service at Headquarters should be consulted for specific guidance.

This position on sharing of reasons for rejections may be subject to review as resettlement countries begin to provide UNHCR with detailed reasons for rejection.

# Resubmission review process

