

## Procedural Standards for Refugee Status Determination under UNHCR's Mandate

# 7. Appeal of Negative RSD Decisions

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## 7.1 The Right to Appeal

### 7.1.1 The Scope of the Right to Appeal

Every Applicant whose RSD decision was negative at first instance has the **right to appeal that negative RSD decision**. The scope of the review on appeal encompasses both findings of fact and the application of the refugee criteria under UNHCR's mandate. The review of the negative RSD decision at the appeal stage should also take into consideration any new information relevant to the claim, including information relating to a change in the Applicant's personal circumstances or a change in the situation in their country of origin.

Access to appeal procedures should not be restricted for reasons relating to procedural irregularities<sup>1</sup> by the Applicant during the RSD procedures (unless in accordance with § 7.2 – *Procedures for Receiving Appeal Applications*) or for reasons related to the merits of the claim. As such, Applicants whose claims were rejected as manifestly unfounded at first instance also have a right to appeal that negative RSD decision.

All appeal applications should be determined on their own merits in accordance with the procedures as set out below (see § 7.4 – *Procedures for Determining Appeal Applications*). **Appeals against negative RSD decisions on claims for derivative refugee status**, and appeals against decisions to cease, cancel or revoke refugee status must also be conducted in accordance with the procedures set out in this Unit.

Applicants should continue to enjoy the rights and protection accorded to them as registered asylum-seekers (or refugees if refugee status is ceased, cancelled or revoked) throughout the period allowed for submitting an appeal and, once the appeal application is submitted, while a final decision is pending.

### 7.1.2 Informing Applicants of the Right to Appeal

Applicants should be informed of the right to appeal a negative RSD decision and the relevant procedures in accordance with the procedures set out in Unit 6 – Notification of RSD Decisions.

**At the end of the RSD Interview**, Eligibility Officers should inform Applicants of the procedures to receive notification of the first instance RSD decision and the relevant appeal procedures and timeframes (see § 4.3.11 – *Closing the RSD Interview*).

**At the time of notification of a negative RSD decision**, Applicants should receive sufficient information regarding the reasons for the rejection of their refugee claim to permit them to determine whether or not to appeal the first instance RSD decision, and to inform their submissions in the appeal application (see § 6.2 – *Notification of Negative RSD Decisions*). Applicants should also receive information regarding the right to appeal the first instance RSD decision and the relevant procedures, including the deadline for submitting an appeal application. An **Appeal Application Form (Annex 7-1)** should be provided to Applicants at this time (see § 6.1 – *Procedures for Notifying Applicants of RSD Decisions*).

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<sup>1</sup> In this context, "procedural irregularities" should be understood as the Applicant not conforming to procedural requirements set out in this Unit, in particular those relating to the time and form of the submission of the appeal application.

## 7.2 Procedures for Submitting Appeal Applications

### 7.2.1 Assistance with Submitting the Appeal Application

Wherever possible, Applicants who consider exercising their right to appeal a negative RSD decision should receive any necessary **procedural counselling and assistance by trained UNHCR staff**. This includes information relating to the appeal process and procedures, as well as assistance with completing the Appeal Application Form for Applicants who are unable to complete it themselves. Any information or explanation relating to the substantive elements of the RSD decision requested by an Applicant in addition to the information received at the time of notification should only be provided by UNHCR Protection staff members who have sufficient RSD experience to provide such counselling.

### 7.2.2 Form of the Appeal Application

As a general rule, **applications for appeal should be made in writing**. Applicants should complete and sign an **Appeal Application Form** (Annex 7-1).

Appeal applications that do not strictly conform to formal filing requirements (that is appeal applications that are not made by using the prescribed Appeal Application Form) may be accepted where the Applicant has clearly indicated an intention to appeal against the negative RSD decision. As a general rule, the intention to appeal should be communicated in writing.

Exceptionally, the intention to appeal may be communicated orally to UNHCR if the personal and contextual circumstances of the Applicant prevent communication of his or her appeal application in writing. This may, for instance, be the case for unaccompanied children of a young age, applicants with mental health and/or physical problems or disabilities, and applicants in detention. The Applicant's intention to appeal, the reasons for the appeal and any information submitted in support of the appeal must be duly recorded on the file by UNHCR, preferably in an Appeal Application Form, and will collectively constitute the appeal application.

### 7.2.3 UNHCR Office where the Appeal Application is to be Submitted

As a general rule, an appeal application must be submitted to the UNHCR Office that decided the claim in first instance. Intervening circumstances may however render it more appropriate that the appeal application is submitted to a different UNHCR Office. For instance where, for personal or protection reasons, an Applicant has moved onwards to a third country where UNHCR conducts mandate RSD, an appeal application may be submitted to the UNHCR Office in that country, or the UNHCR Office responsible for that country, in accordance with the procedures set out in this Unit and the applicable time limits established by the receiving office.

Where an Applicant whose claim was rejected at first instance registers with a UNHCR Office in a different country, his or her RSD application should be considered as an appeal application if made within the prescribed appeal time limit, or after the expiry of the appeal deadline but before the RSD file would normally be closed. If the RSD application is submitted after the RSD file would normally be closed, the RSD application should be considered as a request to re-open the RSD file and should be processed in accordance with the re-opening procedures set out in § 9.2 – *Re-opening RSD Files*. The UNHCR Offices involved should coordinate to share the information required to determine the appeal application or the request to re-open the RSD file, as applicable.

## 7.2.4 Time Limit for Submitting the Appeal Application

UNHCR Offices should establish a **time limit** within which Applicants must submit the appeal application, **and after which negative RSD decisions that have not been appealed should be considered to be final**. In setting appeal deadlines, UNHCR Offices should give due consideration to their operational context, needs and objectives, including the role and capacities of implementing partners, the volume of appeal applications, the available staff resources and the security and protection environment in the host country/country of asylum.

As a general rule, the standard time limit **should not be less than 30 days** after the date on which the Applicant has been notified of the RSD decision and appeal procedures, unless the claims were rejected in accelerated procedures for manifestly unfounded claims, in which case, the time limit **should not be less than 15 days** (§ 6.1 – *Procedures for Notifying Applicant of RSD Decisions*). Timeframes for submitting appeal applications, including appeal applications for claims rejected in accelerated procedures for manifestly unfounded claims, should be **sufficiently flexible** to permit Applicants to obtain legal representation if they wish to do so.

Where notification is done in person, for instance, through an appointment at the UNHCR Office, the period for submitting the appeal application should generally run from the date of the notification, unless the office determines that a later date would be appropriate in the circumstances.

Where a method other than in-person notification is used, an appropriate date on which the Applicant can be deemed to have been notified of the negative RSD decision must be determined and recorded on file. The period for submitting an appeal application should run from the date of deemed notification.

Appeal procedures should be **sufficiently flexible** to permit Applicants to submit an appeal application after the expiry of the deadline where Applicants have valid reasons for submitting an appeal application out of time. Such reasons include, but are not limited to, late receipt of notification of negative RSD decision, health problems, obtaining legal advice and/or representation, and other compelling reasons. To facilitate a flexible approach, the files of Applicants whose RSD decision was negative at first instance should generally not be referred for file closure within a minimum of six weeks following the expiry of the appeal deadline (see § 9.1– *Closing RSD Files*).

Where an appeal application is submitted after the RSD file has been closed, the appeal application should be considered as a **request to re-open the RSD file**. The RSD file should, thus, be referred to re-opening procedures in order to assess whether the established criteria for re-opening the file are met and, if so, whether the case should be referred to first instance or appeal procedures (see § 9.2 – *Re-opening RSD Files*). If it is not possible to establish that the Applicant was duly notified of the negative RSD decision or of the appeal deadline, the file should generally be re-opened for the purpose of examining the appeal application.

## 7.3 Assigning Appeal Files

An appeal application should be determined by a qualified **Eligibility Officer (or other Protection staff member), who was not involved in the adjudication or review of the RSD decision at first instance.** The procedures and principles set out in § 4.1 – *Assigning Files for RSD Adjudication* are applicable to the assignment of files for determination of appeal applications.

Wherever possible, the appeal should be decided by an Eligibility Officer (or other Protection staff member) who has equivalent or greater experience with RSD than the Eligibility Officer who decided the claim at first instance.

Where human resources in a UNHCR Office do not permit assignment of an appeal file to an Eligibility Officer (or other Protection staff member), who was not involved in the adjudication or review of the claim at first instance, an appeal may be decided by another qualified staff member who has the necessary protection experience and training. Where necessary, the UNHCR Office should consult with other UNHCR Offices in the Region, the Regional RSD Officer, and the relevant Bureau and/or Division of International Protection at UNHCR Headquarters, to make appropriate staffing arrangements for determining the appeal, including remote arrangements where necessary and appropriate. These arrangements must not preclude the possibility of an Appeal Interview where it is not appropriate to determine the appeal through a paper review. The criteria for determining whether an Appeal Interview should be granted are set out below in § 7.4.1 – *Assessing whether an Appeal Interview is Necessary*.

## 7.4 Procedures for Determining Appeal Applications

### 7.4.1 General Considerations

The purpose of the appeal procedures is to re-examine the negative RSD decision at first instance to assess whether it was based on a **reasonable finding of fact and a correct application of the eligibility criteria for refugee status** under UNHCR's mandate, in light of all the information available at the time of the decision, as well as any new information relevant to the claim, including information relating to a change in the Applicant's personal circumstances or a change in the situation in their country of origin.

Applications for appeal should generally be processed in the order that they were filed. Where compelling protection, safety and/or security reasons exist, **appeal applications may be determined on a priority basis** and may be subject to shorter processing timeframes in accordance with the procedures set out in § 4.6 – *Accelerated RSD Processing*.

As a general rule, the Interpreter assigned to the case at the appeal stage should not have been previously involved in the determination of the claim, particularly where there are indications of a breach of procedural fairness related to the quality of interpretation at first instance (see also § 2.5.6 – *Impartiality of UNHCR Interpreters*).

Eligibility Officers should begin the appeal determination by conducting a **thorough review of the RSD file**, including the RSD Interview record and the RSD Assessment Form, the Appeal Application Form, and any other information provided by the Applicant in support of the appeal application. The Eligibility Officer should also consider any additional information or issues that were not considered at the first instance but which may affect the outcome of the claim, whether raised by the Applicant or not.

## 7.4.2 Assessing whether an Appeal Interview is Necessary

As a general rule, **Applicants should be given the opportunity to present their appeal in person.** While the determination of the appeal through paper review will be appropriate in certain circumstances, an appeal interview must be conducted if:

- ▶ The negative RSD decision was based on **credibility findings** that were not adequately addressed during the RSD Interview and supported in the RSD Assessment;
- ▶ Information that was relevant to the determination of the claim was presented by the Applicant but was **not adequately considered in the RSD Interview** and the RSD Assessment;
- ▶ **New information** regarding the personal circumstances of the Applicant or a change in the situation in the country of origin that is relevant to the assessment of the refugee status claim is raised in the appeal application or otherwise becomes available. The Appeal Interview should be conducted to assess the reliability of the information; or
- ▶ The Appeal Application Form and/or the RSD Interview record and RSD Assessment, or other relevant information, indicate a **breach of procedural fairness**, which could have affected the ability of the Applicant to establish his or her claim, including but not limited to:
  - Inadequate interpretation;
  - Concerns regarding the real or perceived conduct or profile (ethnic, religious, gender etc.) of the Eligibility Officer or Interpreter
  - Lack of, or limited, opportunity for the Applicant to present relevant information;
  - Lack of, or limited, opportunity for the Applicant to respond to credibility concerns;
  - Failure to inform the Applicant regarding exclusion concerns and/or lack of, or limited, opportunity for the Applicant to respond to exclusion concerns;
  - Concerns regarding the real or perceived conditions of the RSD interview having affected the confidentiality of the RSD procedure; or
  - Inappropriate questioning.

The **determination of the appeal through a paper review** will be appropriate if, after a thorough examination of the file, the Eligibility Officer is satisfied that **all of the following conditions exist**:

- ▶ All relevant information has been presented;
- ▶ The determination of the facts, including decisions to accept or reject particular claimed facts (i.e. credibility assessment), is supported by the RSD Interview record (transcript and/or audio recording) and the RSD Assessment; and
- ▶ The RSD negative first instance decision reached is based on a clearly correct or incorrect application of the refugee criteria to the accepted facts.

In certain circumstances, the determination of an appeal through paper review may also be appropriate to ensure the safety and security of the Applicant and/or Eligibility Officer.

### (a) Appeals in detention and other special cases

As a general rule, appeals of negative RSD decisions that were reached following RSD Interviews with **Applicants in detention** should not be determined through a paper review, given the potential adverse impact that the interviewing conditions (e.g. lack of confidentiality, limited time, security concerns) is likely to have had on the RSD Interview and/or the Applicant's ability or willingness to provide a full and truthful account.

If the Applicant is in detention at the time of the appeal and it is not possible to conduct an interview or the interview conditions would raise serious confidentiality concerns, which may give rise to protection risks for the Applicant, the appeal may exceptionally be determined through a paper review. In adjudicating such cases, the Eligibility Officer will need to take into account the inability of the Applicant to present a statement in support of his or her appeal application in person.

Other categories of cases where appeals should generally not be determined solely through a paper review include appeals:

- ▶ by unaccompanied children;
- ▶ by persons with mental health problems; or
- ▶ presenting complex legal or factual issues.

Whether an appeal application is determined on the basis of a paper review or an Appeal Interview, UNHCR offices should ensure that **appeal applications are processed in a fair, prompt and transparent manner**. The reasons for conducting an Appeal Interview (or not) must be recorded on file.

### 7.4.3 Conducting the Appeal Interview

The Eligibility Officer should open the Appeal Interview by reviewing the introductory points set out in § 4.3.5 – *Opening the RSD Interview*.

#### STANDARDS & GUIDELINES

THE ELIGIBILITY OFFICER SHOULD ALSO EXPLAIN THE FOLLOWING PROCEDURAL ISSUES RELATING TO THE APPEAL PROCESS:

- ▶ The Appeal Interview is being conducted because the Applicant has requested a review of the RSD decision;
- ▶ The purpose of the Appeal Interview is to examine the issues or concerns presented by the Applicant in the Appeal Application Form and to clarify any other issues that are relevant to the determination of the refugee claim. The information that was presented and accepted as credible at the first instance will generally not be re-examined during the Appeal Interview, unless necessary for the determination of the appeal;
- ▶ The possible outcomes of the appeal process, including the closure of the Applicant's RSD file if the appeal is denied.

Before commencing the Appeal Interview, the Eligibility Officer should ensure that the Applicant understands the **general reasons why the refugee claim was rejected** in the first instance.

As a general rule, the Eligibility Officer should focus the Appeal Interview on issues that relate to the grounds for conducting the Appeal Interview and on the specific information or concerns presented by the Applicant in the Appeal Application Form. The Eligibility Officer **should not conduct a full RSD Interview** unless this is necessary to decide the appeal. The Applicant's statements and other information provided in support of facts material to the claim that were accepted in the RSD Assessment should not be re-examined in the Appeal Interview unless there are indications that they were not, or not adequately, considered in the RSD Interview and/or Assessment, or unless new information<sup>2</sup> puts previously accepted facts in doubt.

The Eligibility Officer who conducts the Appeal Interview should maintain a verbatim **Appeal Interview transcript**. Wherever possible, offices are strongly encouraged to maintain an **audio recording of the Appeal Interview in addition to the written transcript**. The use of audio recording *in lieu* of a written transcript may, exceptionally, be appropriate in cases involving **particularly vulnerable Applicants** (such as young unaccompanied or separated children, victims of trauma or applicants with mental health issues). Not having to take down a written record of the interview is likely to assist in building rapport and may create a less stressful and less intimidating environment for the Applicant. In such cases, the audio recording should generally be transcribed after the interview to facilitate the decision-making and review process. The principles and considerations set out in § 4.3.8 – *Recording the RSD Interview* are relevant to the appeal procedures.

#### 7.4.4 The Appeal Assessment

Notwithstanding whether the determination of the appeal is completed through paper review or following an appeal interview, the reasons for the determination of the appeal should be documented in the **Appeal RSD Assessment Form (Annex Annex 7-2)**, which should be signed by the Eligibility Officer who decided the appeal.

#### 7.4.5 Review of Appeal Decisions

Every Appeal Assessment should be reviewed by a UNHCR Protection staff member other than the Officers who determined the claim at first instance and on appeal. Where it is not feasible to review all Appeal Assessments, it is strongly recommended that at a minimum every Appeal Assessment that overturns the RSD decision be reviewed, as well as all decisions reached through paper review.

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<sup>2</sup> In this context, “new information” should be understood as new information, including any Applicant's statements, relating to a change in the personal circumstances of the Applicant or in the situation in the country of origin that is relevant to the assessment of the refugee status claim (see § 7.4.2 – *Assessing whether an Appeal Interview is Necessary*).



## 7.5 Notification of Appeal Decisions

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UNHCR Offices should establish timelines for the issuance of appeal decisions. Appeal procedures should promote fair and **prompt review and determination** of all appeals.

Applicants should be **notified in writing** of the decision on their appeal. As a general rule, it is **not necessary to provide reasons for the appeal decision**.

The files of Applicants who are rejected on appeal should be referred to procedures for closure of the file (see § 9.1 – *Closing RSD Files*).

## Annex 7-1: UNHCR Appeal Application Form for Refugee Status Determination

UNITED NATIONS  
HIGH COMMISSIONER  
FOR REFUGEES



NATIONS UNIES  
HAUT COMMISSARIAT  
POUR LES RÉFUGIÉS

*[Address of Country Office]*

*[Adresse de la Délégation]*

FOR UNHCR USE ONLY	UNHCR REGISTRATION NO.	<input type="text"/>
	RSD FILE NO.	<input type="text"/>
	DATE OF NOTIFICATION OF FIRST INSTANCE DECISION	<input type="text"/>
	DATE OF RECEIPT OF APPEAL APPLICATION	<input type="text"/>

### APPEAL APPLICATION FORM FOR REFUGEE STATUS DETERMINATION

Name of Applicant:

Date of Birth:

UNHCR Registration No.:

Telephone No.:

In the spaces provided below, please indicate the reasons why you believe that the decision reached in your refugee status claim is wrong. Please check all the reasons that apply and, in each instance, please explain why. Please do not limit yourself to the information you have already given UNHCR and provide as many details as possible.

You may use as many additional pages as necessary; please ensure that you and your legal representative [if any] have signed all additional pages.

NOTE: It is also very important for you to be aware that your Appeal Application could be reviewed and decided on the basis of the file and the information you have provided in this form, without the need for an appeal interview.

**Please contact UNHCR at the address indicated above, if you have any questions about the appeal process or your appeal application, or if you need assistance with filling this Appeal Application Form.**

### Reasons for Appeal

**Incorrect facts**

If any of the facts relied upon by UNHCR in reaching the decision in your refugee claim are incorrect, please explain which ones and provide the correct information/facts. Please indicate whether the facts relied upon by UNHCR are different from the facts you have presented in the RSD Application or during the interview. If you believe that UNHCR misunderstood or misinterpreted parts of your story, please explain which parts were misunderstood or misinterpreted and what is the correct situation.

**Problems with procedures or process at first instance**

Please indicate any issues or incidents relating to the procedures or process for determining your claim that made it difficult for you to explain why you are a refugee. These may include, for example, problems with the gender of the interpreter or the interviewer, problems with interpretation or language, problems with the way the questions were asked or how the interview was conducted, whether inconsistencies were put to you for comment, the presence of family members or other persons who prevented you from telling your story, or issues relating to the information or evidence you have submitted or that was submitted on your behalf, etc.

**New information relevant to your refugee claim**

Please provide any information relevant to your refugee claim that you have not previously presented to UNHCR, and explain why you could not or did not present this information earlier.

**Other reasons**

Please write any other reasons why you believe the decision reached in your case by UNHCR was wrong. This may include, for example, an incorrect application of the refugee criteria, as explained to you in the RSD Interview.

**List of Supporting Evidence**

Please list below any additional documents or other evidence you are submitting in support of your Appeal Application:

1.
2.
3.
4.
5.

I declare that the information I have provided above is true and complete to the best of my knowledge.

Signed:  Date:

Name and Signature of Appeal Officer:  Date:

## Annex 7-2: UNHCR Appeal RSD Assessment Form

### UNHCR RSD Appeal Assessment Form

UNHCR OFFICE:	FILE NO.:
NOTIFICATION OF NEGATIVE RSD DECISION DATE:	
APPEAL SUBMISSION DATE:	APPEAL OFFICER:
DATE OF APPEAL INTERVIEW(S) (IF APPLICABLE):	
APPEAL INTERVIEW INTERPRETER:	LANGUAGE OF APPEAL INTERVIEW:

#### APPLICANT'S BASIC BIO-DATA

FULL NAME:	NATIONALITY:
IF STATELESS, PLACE OF FORMER HABITUAL RESIDENCE:	
DATE OF BIRTH:	ETHNICITY:
SEX:	RELIGION:

#### PART I – TIMELINESS OF APPEAL

I-1 Has the appeal application been submitted within the established time limit?

Yes  No

If 'No', briefly explain with reference to the date of receipt of the appeal application, the established time limit to submit an appeal application, and the date of notification (or the date of deemed notification) of the negative RSD decision.

If 'Yes', briefly explain and proceed directly to Part II: Review of the Negative RSD and File.

I-2 If the appeal application has been submitted outside of the established time limit, are there valid reasons that would warrant consideration of the appeal?

Yes  No

If 'Yes', briefly explain and proceed to Part II – Review of Negative RSD Decision and File.

If 'No', briefly explain and proceed directly to Part VI – Recommendation and delete the remainder of this form.

## PART II – REVIEW OF NEGATIVE RSD DECISION AND FILE

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### Summary of the Claim in the Negative RSD Decision

II-1 Briefly summarize the material elements of the Applicant's claim at first instance (Part I of the RSD Assessment Form).

### Reasons for Negative RSD Decision

II-2 Indicate the ground(s) for the negative RSD decision and briefly summarize the reasons for rejection:

- Credibility
- Well-founded fear
- Persecution
- Grounds for persecution
- Broader refugee criteria
- Internal flight or relocation alternative
- Exclusion pursuant to Article 1F
- Other (not outside the country of nationality/habitual residence, exclusion pursuant to Article 1D or Article 1E)

Summary of reason(s):

### Credibility Assessment

**II-3** Were the findings with regard to the credibility of to the Applicant's statements on material elements of the claim reasonable?

Yes  No

If 'No', briefly explain the reasons why you consider the credibility finding(s) regarding material elements of the claim not to be reasonable. In doing so, consider the Applicant's oral and written statements as well as all other information, including COI, that was available at the time of the negative RSD decision.

### Application of the Eligibility Criteria

**II-4** Were the eligibility criteria for refugee status under the 1951 Convention and the broader refugee criteria correctly applied?

- |   |                           |                          |                           |
|---|---------------------------|--------------------------|---------------------------|
| a) Well-founded fear  | Yes <input type="radio"/> | No <input type="radio"/> | N/A <input type="radio"/> |
| b) Persecution  | Yes <input type="radio"/> | No <input type="radio"/> | N/A <input type="radio"/> |
| c) Grounds for persecution  | Yes <input type="radio"/> | No <input type="radio"/> | N/A <input type="radio"/> |
| d) Internal flight or relocation alternative  | Yes <input type="radio"/> | No <input type="radio"/> | N/A <input type="radio"/> |
| e) Broader refugee criteria   | Yes <input type="radio"/> | No <input type="radio"/> | N/A <input type="radio"/> |
| f) Exclusion pursuant to Article 1F   | Yes <input type="radio"/> | No <input type="radio"/> | N/A <input type="radio"/> |
| g) Other (not outside the country of nationality/<br>habitual residence, exclusion pursuant<br>to Article 1D or 1E) | Yes <input type="radio"/> | No <input type="radio"/> | N/A <input type="radio"/> |

If 'No' to any of the above, briefly explain the reasons you considered the particular element(s) of the eligibility criteria was/were incorrectly applied. In doing so, refer as necessary to the reasonableness of the credibility findings regarding material elements of the claim.

### Procedural Fairness

**II-5** Does a review of the negative RSD decision and other relevant information on file indicate a breach of procedural fairness that could have affected the Applicant's ability to establish the claim?

Yes  No

If 'Yes', indicate which of the following breaches occurred (check all which apply) and briefly explain the reasons:

- Inadequate interpretation
- Real or perceived concerns regarding the conduct or profile (ethnic, religious, gender etc.) of the Eligibility Officer or Interpreter
- Lack of, or limited, opportunity for the Applicant to present relevant information
- Lack of, or limited, opportunity for the Applicant to respond to credibility concerns
- Failure to inform the Applicant regarding exclusion concerns and/or lack of, or limited, opportunity for the Applicant to respond to exclusion concerns
- Real or perceived concerns regarding the confidentiality of the RSD procedure
- Inappropriate questioning
- Other breaches of procedural fairness (elaborate below)

### PART III - APPEAL APPLICATION

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**III- 1** Summarize any specific issues or concerns, including any new information, raised by the Applicant in the Appeal Application Form:



**PART IV–APPEAL INTERVIEW**

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**IV-1** In light of the above, indicate whether an Appeal Interview is required and why (check all applicable reasons):

Yes  No

- to clarify issues of procedural fairness
- to address concerns relating to the credibility findings on material elements of the claim
- to address mistake(s) of fact
- to address error(s) in the application of the eligibility criteria (error(s) of law)
- to examine newly submitted information regarding the personal circumstances of the Applicant or a change in the situation in the country of origin relevant to the determination of the claim
- for other reasons

Briefly explain.

**IV-2** If an Appeal Interview must be conducted, briefly outline the key issues to be addressed during the Interview.

(i)

(ii)

(iii)...

If an Appeal Interview is required, conduct the Interview before proceeding to Part V – Appeal Assessment.

If an Appeal Interview is not necessary, proceed to Part V- Appeal Assessment.

## PART V – APPEAL ASSESSMENT

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**V-1** Based on the above review of the negative RSD decision and the RSD file, as well as all other available information at the time of the appeal, including information gathered through the Appeal Interview (where applicable), briefly summarize the material elements of the Applicant’s claim.

If the material elements of the Applicant’s claim are the same as at first instance, simply cross-reference to the Summary of the Claim in Part II-1 above.

**V-2** Evaluate the credibility of the Applicant’s oral and written statements regarding the material elements of the claim with reference to the relevant credibility indicators and taking into account the reasonableness of any explanations provided by the Applicant for apparent credibility problems.

Credibility findings on material elements of the claim that were reasonably made in the negative RSD decision need not be reconsidered unless:

- (i) there is new information relating to that particular aspect of the claim; and/or
- (ii) the credibility finding was incorrect.

Where applicable, explain how the information available at the time of the appeal, including the information submitted by the Applicant, may or may not affect the credibility findings on the material elements of the claim reached in the negative RSD decision.

Briefly summarize any credibility findings in the negative RSD decision that remain unchanged because they were correctly reached and because there is no new information relating to them.

### Well-Founded Fear

**V-3** Considering the individual profile and experiences of the Applicant, and the experience of similarly situated individuals in the country of origin, and other relevant COI, is there a reasonable possibility that the Applicant would experience harm if returned to the country of nationality or habitual residence?

Yes  No

Explain with reference to the accepted facts material to the Applicant's claim and relevant and up-to-date COI. Identify the harms that are reasonably possible if the Applicant were to return to his/her country of nationality or habitual residence.

### Persecution

**V-4** If you have determined that the Applicant has a well-founded fear of harm if he/she returns to the country of nationality or habitual residence, does the harm you have identified constitute persecution?

Yes  No

Explain with reference to the forms of harm identified, including serious violations of human rights, as well as less serious violations of human rights, and/or discrimination that could cumulatively constitute persecution.

### Reasons for Persecution

**V-5** Does the harm you have determined would await the Applicant relate to one or more of the grounds in the 1951 Convention/1967 Protocol?

Yes  No

If 'Yes', select the relevant ground and delete all others. Provide an explanation for the grounds selected.

- race
- religion
- nationality
- membership of a particular social group
- political opinion

### Availability of Internal Flight or Relocation Alternative

**V-6** If you have determined that the Applicant has a well-founded fear of persecution in the country of nationality or habitual residence, does the Applicant have the possibility to return to any part of that country where he or she could reasonably live without fear of persecution or undue hardship?

Yes  No

Explain with reference to relevant and up-to-date COI.

### Conclusion on Inclusion under 1951 Convention/1967 Protocol

**V-7** Does the Applicant meet the inclusion criteria in the 1951 Convention/1967 Protocol?

Yes  No

### Inclusion Assessment – Other International Protection Needs

**V-8** If the Applicant does not fulfill the inclusion criteria of the 1951 Convention/1967 Protocol, is he/she outside his/her country of nationality or habitual residence and unable to return there owing to serious and indiscriminate threats to life, physical integrity or freedom resulting from generalized violence or events seriously disturbing public order?

Yes  No

If 'Yes', explain.

If the Applicant meets the inclusion criteria of the 1951 Convention/1967 Protocol (V-7) or the broader refugee criteria (V-8), proceed to Question V-9.

If the Applicant does not meet the inclusion criteria, you may proceed to Part VI.

**Application of the Exclusion Clauses**

V-9 Is there reliable information indicating that the Applicant may have been associated with acts that could bring him/her within the application of the exclusion clauses in Article 1F(a), (b) or (c) of the 1951 Convention?

Yes  No

If no exclusion clauses are triggered, proceed to Part VI.

If there are indications that an exclusion clause may apply, complete and attach the Exclusion Assessment part of the RSD Assessment Form for Part V-9.

**PART VI –RECOMMENDATION**

In light of the foregoing assessment, it is recommended that:

- The appeal is inadmissible because the Appeal Application was submitted out of time.
- The appeal is accepted and the negative RSD decision is overturned as the Applicant meets the criteria set out in Art. 1A(2) of the *1951 Convention relating to the Status of Refugees and its 1967 Protocol*, and should be recognized as a refugee.
- The appeal is accepted and the negative RSD decision is overturned as the Applicant is outside of his/her country of nationality or habitual residence and is unable to return there owing to serious and indiscriminate threats to life, physical integrity or freedom resulting from generalized violence or events seriously disturbing public order. The Applicant should be recognized as a refugee pursuant to the broader refugee criteria.
- The appeal is rejected and the negative RSD decision is maintained for the same reasons as at stated in the negative RSD decision.
- The appeal is rejected and the negative RSD decision is maintained for different reasons as outlined above.

Name and Signature of Appeal Officer:

Date:

Name and co-signature of Reviewing Officer:

Date: