

Refugee Status Determination standards and principles in evidence assessment

UNHCR Armenia



Contents

- International standards
 - UN High Commissioner for Refugees
 - European Union
 - European Court of Human Rights

Key elements of the analysis

- Context
- Material facts – what is relevant?
- Burden of proof – who needs to prove?
- Standard of proof – what needs to be proven?
- Individual assessment

Goals and objectives

- Information on legal norms regarding
- standard of proof
- Indication of helpful reference materials
- Exchange of experiences

UNHCR standards

- **Supervisory role of UNHCR - Article 35 of the 1951 Geneva Refugee Convention**
- co-operation of the national authorities with the United Nations
- facilitation of UNHCR's duty of supervising the application of the Convention
- provision of information and statistical data requested

UNHCR guidance on evidence assessment

- No provisions in the 1951 Geneva Convention or the 1967 New York Protocol
- UNHCR Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees
- UNHCR Note on Burden and Standard of Proof in Refugee Claims (16 December 1998)
- UNHCR Guidelines on Application of Exclusion Clauses (4 September 2003)

Sources of EU standards

- Common European Asylum System/
- Qualification Directive of 2006, re-cast in 2011 and 2013
- Article 4: Assessment of facts and circumstances

Sources of ECtHR standards

- European Court of Human Rights
- European Convention on Human Rights and Fundamental Freedoms
- Case law of the Court
 - Nachova v. Bulgaria, 2005; Said v. the Netherlands, 2005; R.C. v. Sweden, 2010
 - Collins and Akasiebie v. Sweden, 2007; N. v. Sweden, 2010

General principles and approaches

- RSD is part of international law
- Consequences of return
- RSD is rights based
- RSD is declaratory
- Shared burden of proof
- Benefit of a doubt

General principles and approaches, cont.

- Take a global view of the claimant's circumstances
- Special considerations in testing and assessing credibility
- Each claim is unique
- Importance of COI
- Special type of risk assessment
- A proactive approach

Key principles in the interpretation of the 1951 Convention

- Humanitarian spirit
- Preamble to the 1951 Convention
- Interpretation of treaties

General analysis

- “Well-founded fear of being persecuted” - determination primarily require an evaluation of statements rather than judgment on the situation in the country of origin
- “Well founded” – frame of mind supported by objective situation

Context

- Refugee status determination
 - **Granting refugee status**
 - Exclusion from refugee status
 - Cancellation of refugee status
 - Cessation of refugee status
- Individual assessment for the future*
- Specific position of an asylum-seeker

Need to assess whether a person is a refugee

- Foreign national/stateless person out of his/her country due to well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion (Article 6.1(1) LRA)

Material facts

- What is relevant?
- Linked to the refugee definition
- Evidence + All information available

Burden of proof - who needs to prove?

- APPLICANT

- Provide initial information on the case
- Make a genuine effort
- Be coherent & consistent
- Provide satisfactory explanation for discrepancies

- DECISION-MAKER

- Assess the relevance of the information
- Gather additional information, as needed
- Assess the credibility
- Make the decision

Standard of proof- what needs to be proven?

- Balance of probabilities
- more probable than not

Core stages of Refugee Status Determination

- Information about the refugee claimant
- Country of Origin Information
- Application of the Convention refugee definition

Establishing the facts: principles and methods

- It is a duty of an applicant to furnish evidence
- RSD officer assess validity of any evidence and credibility of applicant's statements
- Shared burden of proof
- Benefit of the doubt

Establishing facts: summary

- The applicant should:
 - Tell the truth and assist in establishing facts of his case
 - Invest an effort to support his statements
 - Supply all information concerning himself and his past experience

Establishing facts: summary

- The examiner should:
 - Ensure that the applicant presents his case as fully as possible
 - Assess credibility and evaluate evidence
 - Relate these elements to the relevant criteria of the 1951 convention

Establishing facts: special cases

- Survivors of torture & trauma (incl. SGBV)
- Persons with mental disabilities
- Unaccompanied minors

Principles underlying RSD

- Decide each case on its-own merits
- Give benefit of the doubt
- The standard of proof is serious possibility not probability
- Preserve underlying humanitarian spirit of refugee determination
- Remember the consequences of a wrong decision