

INFORMATION ASSESSMENT AND DECISION

Key Questions –Two questions are central to the EO’s determination of an applicant’s eligibility for refugee protection:

- Why did the applicant leave his country of origin, and
- Why is he unable or unwilling to return to it

The assessment or reasons for decision can be divided into two steps:

1. Decide what information to accept. This is called the credibility assessment.
2. Apply the legal requirements of the elements of the refugee definition to the accepted facts. This is called the legal analysis.

CREDIBILITY ASSESSMENT – DECIDING WHAT FACTS TO ACCEPT

Credibility Assessment - “... the process of gathering relevant information from the applicant, examining it in light of all of the information available to the decision maker, and determining whether the statements of the applicant relating to material elements of the claim can be accepted.”¹

How sure must the EO be that the statements can be accepted? “Credibility is established where the applicant has presented a claim which is coherent and plausible, not contradicting generally known facts and therefore is, on balance, capable of being believed.”² Therefore, to accept that something is “credible” is not the same as showing that it is true.

Basic Principles of Credibility Assessment:

- **Individual Assessment** – The assessment must be carried out on an individual basis taking into account the individual and contextual circumstances of the individual. This includes the applicant’s personal background and COI. ³
- **Objective Evidence –based Assessment** – Do not pre-judge credibility. The assessment of credibility is undertaken at the end of the interview after all the evidence has been gathered. Credibility is based on relevant evidence and not on the EO’s intuition, speculation or gut feeling. Credibility findings must be explained and supported by the evidence.
- **Focus on Material Facts** - A material fact is something that goes to the core of the claim and is fundamental to the applicant’s fear. Identify the material facts of the case and assess those. Do not focus on minor facts that do not affect the central elements of the claim.
- **Opportunity to Comment on Credibility Issues** – The applicant has a right to be alerted to credibility issues and to be given a chance at the interview to explain them.

1 UNHCR, Beyond Proof – Credibility Assessment in EU Asylum Systems, May 2013 at 27

2 UNHCR, Note on Burden and Standard of Proof in Refugee Claims, 16 December 1998 at paragraph 11

3 UNHCR, Beyond Proof – Credibility Assessment in EU Asylum Systems, May 2013 at 22

- **Credibility Assessment Based on the Entire Evidence** - All available evidence must be considered and not just selected portions of the evidence. Where the evidence goes both ways, the EO must explain why he prefers one piece of evidence over the other.
- **Close and Rigorous Scrutiny** - This means that the applicant should be able to present his case to the full and that all the evidence presented be considered. It also means that the EO has a duty to examine the evidence carefully and give it rigorous scrutiny.
- **Benefit of the Doubt**- This concept recognizes the difficulties that applicants and EOs have in gathering evidence to support the claim. The European Court of Human Rights has noted on several occasions the necessity of giving asylum seekers the benefit of the doubt because of their unique situation.⁴ Therefore, notwithstanding the fact that not all the applicant's statements can be corroborated, the applicant should be given the benefit of the doubt if he has made a genuine effort to substantiate his story and is generally credible.⁵

Credibility Indicators

There is no infallible way to determine whether an applicant's statements are genuine. However, international and national jurisdictions⁶ have developed credibility indicators against which the applicant's evidence and any other evidence are assessed. These include⁷:

- Sufficiency of detail and specificity
- Internal consistency of oral and written facts asserted by the applicant
- Consistency of applicant's statements with information provided by family members and other witnesses
- Consistency of applicant's statements with available specific and general information
- Plausibility
- Demeanour

Sufficiency of Detail and Specificity - This indicator requires the EO to assess the detail given by the applicant. Does the level of detail reasonably reflect what one would expect from a person with the applicant's background?

Internal Consistency of the Oral and Written Material Facts Asserted by the Applicant -

Inconsistencies and contradictions are said to be at the heartland of credibility assessment. Internal consistency is assessed with respect to three aspects of the evidence:

⁴ *R.C v. Sweden*, no. 41827/07 (Judgment), ECtHR, 9 March 2010, para. 50; *N. v. Sweden*, no. 23505/09 (judgment). ECtHR, 20 July 2010, para. 53; *F.H/ v. Sweden*, no. 32621/06 (Judgment), ECtHR, 20 January 2009, para. 95

⁵ UNHCR, Handbook on Procedures and Criteria for Determining Refugee Status, Geneva, 1992, reissued December 2011 at paragraphs 203-204

⁶ International jurisdictions include the International Criminal Tribunal for Rwanda and the International Criminal Tribunal for the former Yugoslavia. Many asylum systems throughout the world have guidance on credibility assessment. See for example: Australia: Refugee Review Tribunal, Guidance on the Assessment of Credibility, March 2012,; Canada: Immigration and Refugee Board of Canada, Assessment of Credibility in Claims for Refugee Protection, 31 January 2004; Sweden: Swedish Migration Board, Guidelines for Investigation and Evaluation of the Needs of Women for Protection, 28 March 2001; United Kingdom: UK Border Agency, Considering Asylum Claims and Assessing Credibility, July 2010; United States: refugee, Asylum and International Operations Directorate, Asylum Officer Basic Training Modules

⁷ See: UNHCR, Beyond Proof – Credibility Assessment in EU Asylum Systems, May 2013, Chapter 5 at 137-191

- Whether statements within the refugee interview are consistent
- Whether statements made at the interview are consistent with previous oral or written statements, and
- Whether written and/or oral statements made by the applicant are consistent with documentary evidence

Consistency of the Applicant's Statements with Information Provided by Family Members and/ or Witnesses - Information from others about the applicant's experiences may differ from what the applicant has said. This is because the witnesses are recounting the event from their perspective and how they remember it. If significant inconsistencies arise between the testimony of the applicant and the testimony of others, the applicant must be given a chance to respond

Consistency of the Applicant's Statements with Available Specific and General Information - The applicant's statements must be viewed in the context of the relevant background situation. The COI in question should be reliable, objective and time appropriate.

Plausibility - If a story is plausible, it makes sense in the world as we know it. It conforms to common sense and experience. The danger in relying on plausibility is due to its subjective nature. What is plausible to one person may not be plausible to another and this problem is heightened in a cross cultural context.

UNHCR recommends that if plausibility is used as an indicator of credibility that the assessment is conducted with reference to the entirety of the evidence and other indicators of credibility. As a general proposition, basing a decision on plausibility alone is not good practice. The European Asylum Curriculum (EAC) states that a finding of implausibility must be based "on reasonably drawn, objectively justifiable inferences".⁸ The EO must give reasons why an account or fact is not plausible and support his conclusion with evidence.

Credibility Indicator - Demeanour - Demeanour refers to the outward manner and behaviour of a person. Credibility assessment in this context means assessing the manner in which the applicant responds to questions, his facial expressions, tone of voice, physical movements, general integrity, intelligence and recall ability.

While a person's demeanour may prompt or guide questioning, UNHCR is of the view that it should not be relied on as a credibility indicator. As noted by one refugee law expert:

Although witness behaviour, such as manner of expression, politeness, firmness of speech, nervousness or openness, is sometimes considered a good guide to credibility, cultural differences will often invalidate this approach.⁹

While the use of demeanour to judge deceptive behaviour is not only problematic in cross-cultural situations, there is a wide body of research that shows there are very few reliable behavioural indicators to prove that someone is lying.¹⁰

⁸ UNHCR, Beyond Proof – Credibility Assessment in EU Asylum Systems, May 2013 at 184

⁹ Guy Goodwin-Gill, The Refugee in International Law, 2nd ed. (Oxford: Clarendon Press, 1996) at 355

Assessment of Documentary Evidence

Documentary information must not only be credible. It must be assessed with respect to relevance and weight. Relevant information is information that is important to resolving the issues before the EO. Weight is how much value the EO attaches to the information or evidence.¹¹

A number of sources of COI should be considered. EU law and the jurisprudence specify that a range of documents should be considered from a variety of sources including UNHCR, Council of Europe documents, documents from relevant international organizations, national reports and reports from NGOs.¹²

The methodology of the COI is important. How does the source know what it says it knows? This requires answers to the following interrelated questions:¹³

- Who is providing the information? What is his reputation/ expertise?
- What information is provided?
- Why is the information being provided? What is the agenda of the source?
- How is the information presented? How was the information gathered? Is it presented in an objective, neutral and transparent way?
- When was the information gathered?

As a general rule, sources that cannot be assessed as being reliable should not be used. The Common EU Guidelines for Processing COI refer to these as “dubious” sources as exemplified by personal websites, weblogs and internet forums.¹⁴ The reliability of Wikipedia, for instance, is problematic because the information can be altered by anyone who wishes to do so. The Common EU Guidelines for Processing COI is of the view that if a dubious source is the only source of information and it is important to the application, it could be used but the EO would have to state the source could not be assessed as being reliable and explain why. It is recommended that best practice would be not to use such material.¹⁵

Accuracy and Up- to- Date Information - Information relied on by the EO should be facts as they relate to the country of origin at the time of taking a decision. This implies up-to-date information.

Transparency - The preferred position of UNHCR and others is that decision-makers should use publicly available COI.

¹⁰ UNHCR, Beyond Proof – Credibility Assessment in EU Asylum Systems, May 2013 at 187

¹¹ Immigration and Refugee Board of Canada, Weighing Evidence, December 2003

¹² Salah Sheekh v. The Netherlands [2007] ECHR (11 January 2007); Council Directive 2005/85/EC on Minimum Standards on Procedures in Member States for Granting and withdrawing Refugee Status (Procedures Directive), Articles 8 (2)(b) and 30(5)

¹³ ARGO Project, Common EU Guidelines for Processing Country of Origin Information, 2008 at 8-9

¹⁴ ARGO Project, Common EU Guidelines for Processing Country of Origin Information, 2008 at 10 -11

¹⁵ In A. v. MJELR, (unreported) 875JR/06, Irish High Court, Herbert J., 8 May 2008, the Court, in granting leave for judicial review noted that the material that was relied on was a Wikipedia document that was neither disclosed nor put to the applicant.

Legal Analysis - Applying the Elements of the Refugee Definition to the Accepted Facts

Once the EO decides what facts to accept, he must then apply the law to those facts to resolve legal issues and make a decision. The legal analysis will focus on the elements of the refugee definition as well as an internal flight alternative if applicable. It is not sufficient to list the facts and pronounce a decision. The EO must examine the accepted information in light of the requirements of the definition and come to conclusions as to whether the elements of the definition are met.

Risk Test Under Well-founded Fear – The applicant may have a genuine fear of harm but this is not enough to meet the refugee definition. There must be an objective basis to the applicant’s fear. The question to be answered is whether there is a reasonable chance or a reasonable possibility the applicant will suffer harm if returned to the country or origin. The reason why the test is framed as “possibility” and not “probability” is because the EO is assessing future risk, something that cannot be done with absolute accuracy.

Suggested Assessment Format

The following format is one based on the format used by UNHCR:

RSD ASSESSMENT FORMAT:

Part 1: Administrative Data – Office, File Number, Name of EO, Date of Interview/s, Interpreter/ Language of Interpretation

Part 2: Applicant’s Basic Bio-Data – Date of Birth, Sex, Nationality (of Country of Habitual Residence), Ethnicity, Religion

Part 3: Summary of Claim

Briefly summarize the applicant’s reasons for leaving his country of origin and for being unwilling or unable to return

Include statements regarding treatment he has experienced or believes he would face on return and why he believes this is likely.

Do not summarize everything detail in the interview transcript. Select facts that are material to the refugee definition.

Do not assess the facts as to credibility. Simply set out what the applicant has stated.

Do identify inconsistencies and any explanations that the applicant gave to clarify them.

Part 4: Credibility Assessment

Identify the material elements of the claim.

Evaluate the information provided by the applicant regarding each material element with reference to the relevant credibility indicators and taking into account the reasonableness of any explanations provided by the applicant for apparent credibility problems.

In this section, the EO is deciding about the truthfulness of the applicant. The applicant may be truthful but may be wrong in his understanding of the facts. Whether what the applicant believes is accurate is assessed under well-founded fear.

Benefit of the doubt – This principle may be applied in the appropriate circumstances to establish facts for which there is no independent proof or for which some doubt might exist.

The above credibility evaluation will lead to one of three conclusions:

Option One – The material elements of the claim are accepted as presented. The applicant’s account was generally detailed and consistent. The applicant presented a claim that was coherent and plausible, not contradicting generally known facts and therefore is, on balance, capable of being believed.

This option is appropriate if there are no significant credibility problems on material points of the claim. The account need not be perfect – minor credibility problems on non-material points may be disregarded.

Briefly high light positive credibility indicators including COI and other documents that support the applicant’s statements.

Option Two – There are some credibility problems but the core material elements of the claim are accepted as true. The EO should deal with each material element for which there was a credibility problem and refer to the relevant credibility indicator. Explain which facts are not accepted and why and indicate which facts remain that have been accepted.

This option is appropriate in situations where the EO finds that the applicant has exaggerated parts of the claim or has not been truthful about certain facts.

As a general rule, it is not appropriate to apply the benefit of the doubt in such cases.

If the EO concludes that the applicant has presented a document that is not valid or authentic, this should be discussed together with reasons why problems with the document affected the assessment of the statement the document was intended to support.

Option Three – There is a lack of credibility on the material elements of the claim. There are serious credibility problems with material elements of the claim. The EO should identify the problems with reference to the credibility indicators explaining why the applicant’s clarifications were not satisfactory and, therefore, not accepted.

Even if the applicant’s statements are not accepted with respect to the material points of his claim, if the EO accepts his profile (for example, nationality, age, ethnicity, religion), the EO should proceed to the analysis of well-founded fear to explain whether an individual with this profile would be at risk if returned to the country of origin.

If the credibility problems are so significant that it is not possible to determine the basic facts of the applicant’s profile, it may be appropriate to end the analysis here.

Part 5: Legal Assessment – Inclusion – 1951 Convention

Base the legal assessment only on the facts accepted in the credibility assessment.

Well-founded fear - Considering the relevant COI, the individual profile and experiences of the applicant and the experience of similarly situated individuals in the country of origin, is there a reasonable possibility that the applicant would experience harm if returned to the country of nationality or habitual residence? Yes? No?

Explain the answer to the question with reference to the applicant's profile including his particular personality and experiences (subjective element) and the situation of similarly situated person and situation in country of origin (objective element).

Indicate 1) the harm the applicant fears; 2) who he fears and 3) the availability of state protection.

Use COI to support the analysis.

If the fear is not well-founded, there is no need to assess whether the harm is persecution or is related to a Convention ground.

Persecution - Does the harm identified constitute persecution? Yes? No?

Explain the answer to the question with reference to the seriousness of the harm (and repetition if applicable) and relevant human rights standards.

Depending on the facts, the EO may have to discuss cumulative persecution and/or prosecution v. persecution.

If the harm does not amount to persecution, there is no need to assess whether the harm is related to a Convention ground.

Reasons for Persecution – Does the harm relate to one or more of the Convention grounds? Yes? No?

If the answer is “no”, explain why there is no nexus

If the answer is “yes”, explain why with reference to which ground or grounds apply - race, religion, nationality, membership in a particular social group or political opinion.

If membership in a particular social group is selected, define the social group to which the applicant belongs and indicate why the persecution feared by the applicant is related to his membership in this group.

Availability of Internal Flight or Relocation Alternative – If the applicant has a well-founded fear of persecution for a Convention ground in the country of origin, is there the possibility of return to another part of that country where he could reasonably live without fear of persecution or undue hardship? Yes? No?

Not every application presents IFA issues. As a general rule a detailed IFA analysis is necessary where the agent of persecution is a non-state actor or where the state does not have effective control over all parts of the country.

If IFA is an issue, explain the answer with reference to the relevance and reasonableness tests.

Part Six: Conclusion

Does the applicant meet the inclusion criteria in the 1951 Convention/ 1967 Protocol? Yes? No?

Part Seven: Other Protection Needs

If the applicant does not meet the criteria for inclusion, can he benefit from complementary protection? In this section the EO would analyze complementary protection as specified in national legislation.

Part Eight: Exclusion

If there is reliable information that exclusion might apply, the exclusion analysis would be done here.

Part Nine: Recommendation/ Decision

Select one:

The applicant meets the inclusion criteria and should be recognized as a refugee.

The applicant meets the criteria for complementary protection.

The applicant does not meet the criteria for refugee status or complementary protection and the application should be rejected.

The applicant is excluded from international protection and the application should be rejected.