



Unit 9

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PROCEDURES FOR RSD CASE CLOSURE AND RE-OPENING



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9.1 Closing RSD Cases

Applicants should have their RSD cases closed in the following circumstances:

STANDARDS & GUIDELINES

RSD CASES SHOULD BE CLOSED IN THE FOLLOWING CIRCUMSTANCES:

- ▶ Where an Applicant's refugee status or appeal application is abandoned or deemed to have been abandoned;
- ▶ Where an Applicant's refugee status or appeal application is withdrawn;
- ▶ Upon the death of the Applicant;
- ▶ Following the Applicant's naturalization in the host country/country of asylum or a third country before a RSD decision (at first instance or on appeal) is issued;¹
- ▶ Following an Applicant's voluntary² or forcible return to his/her country of nationality/habitual residence before a RSD decision (at first instance or on appeal) is issued;
- ▶ Following an Applicant's onward movement to a third country before a RSD decision (at first instance or on appeal) is issued;
- ▶ Upon the RSD decision (at first instance or on appeal) becoming final.³

Closure of the RSD case should not be confused with closure of the individual case in UNHCR's case management database. For instance, while the RSD case will be closed as a result of recognition of status, the recognized refugee may continue to remain of concern to UNHCR and his/her individual case may remain active on the case management database for reasons unrelated to RSD, such as provision of assistance or processing for durable solutions.

¹ For guidance on initiation of cessation procedures in cases of naturalization in the host country/country or asylum or a third country following mandate refugee status recognition, please see § 11 – *Procedures for Cessation of Refugee Status*.

² Voluntary return implies an intention on the part of the Applicant to re-establish himself/herself in the country of origin. Short visits to the country of origin should generally not trigger the closing of the RSD case, although such visits will be considered in the determination of the Applicant's claim.

³ Positive RSD decisions are considered to be final upon their issuance. Negative RSD decisions should be considered to be final when they have been decided in first instance and the time limit for filing an appeal has expired, or when they have been decided on appeal.

Applicants who do not attend their first instance or appeal RSD Interview⁴ and do not contact UNHCR to reschedule the Interview within the 6 weeks following the date of the scheduled Interview, or a longer period considered appropriate by the UNHCR Office, should be deemed to have **abandoned the refugee status claim**.⁵ Offices should take adequate measures to ensure attendance at first instance and appeal RSD Interviews and avoid unnecessary or premature closure of RSD cases.⁶

UNHCR Offices should establish procedures to permit Applicants to submit a formal **withdrawal of a refugee status or appeal application** and to request and receive appropriate counselling in this process. As a general rule, the request to withdraw a refugee status or appeal application should be made in writing. Exceptionally, Applicants who are illiterate or who otherwise require assistance in RSD procedures may request the withdrawal of their RSD or appeal application orally, in person at the UNHCR Office. The withdrawal request and reasons for withdrawal, if any provided, must be duly recorded on the Applicant's file and UNHCR's case management database. The RSD cases of Applicants who have withdrawn their refugee status or appeal application should be closed.

If UNHCR receives reliable information to establish that an Applicant is **deceased** or that he/she has moved onwards to a third country,⁷ or has been legally **naturalized** in the host country/country of asylum or in a third country before a RSD decision is issued at first instance or on appeal, the Applicant's RSD case should be closed. Similarly, if UNHCR receives reliable information to establish that an Applicant has **voluntarily returned** to his/her country of origin or has been deported or otherwise forcibly removed from the host country/country of asylum, the Applicant's case should be closed. UNHCR Offices should take reasonable steps to verify such information, including by trying to contact the Applicant at the last known address or telephone number.

If an **Applicant does not exercise the right to appeal** within the established time limit, the negative RSD decision in first instance should be considered **final** and the case should be closed. In accordance with the requirement for flexibility in considering appeal applications that are received after the appeal filing deadline, cases of Applicants whose claims were rejected at first instance should not be referred for case closure for a **minimum of the six weeks** following the expiry of the appeal deadline (see also § 7.2.4 – *Time Limit for Submitting the Appeal Application*).

⁴ In some instances, failing to attend a RSD appointment with UNHCR prior to the RSD Interview (such as an appointment for renewal of an asylum-seeker certificate) and not contacting UNHCR within the six weeks following the initial date of the appointment may also result in the refugee status claim being deemed abandoned. Whether missing a RSD appointment may be considered a deemed abandonment of the claim will depend on the operational context and the circumstances of the case.

⁵ In cases where a first instance decision is issued, but no appeal application is filed within the prescribed timeframe, the decision will be considered final and the case would be closed for this reason rather than abandonment.

⁶ Such measures may include calling the Applicant to confirm attendance prior to the RSD Interview, and sending Applicants automatic reminders of scheduled RSD Interviews. Offices may also pro-actively contact an Applicant after failure to attend a RSD Interview in order to ascertain if he/she had valid reasons for not attending or whether the refugee status claim should be considered abandoned and the file closed.

⁷ Reliable information that an Applicant has moved onwards to a third country may include information that the Applicant has registered with UNHCR in that country or information that he/she has applied for asylum in the third country. In the case of Applicants who have registered with UNHCR in a third country, the UNHCR Office should transfer all information on the Applicant's RSD file and any other relevant information to the UNHCR Office in the third country before closing the RSD case.

The RSD cases of Applicants whose claims are **rejected on appeal** or whose claims were recognized at first instance or on appeal should be referred for case closure.

UNHCR Offices should adopt procedures for closure of RSD cases. Procedures for closing RSD cases should require that case closure is duly recorded on file and UNHCR's case management database, and should set out timeframes for closing the case as appropriate in light of the reasons for closure. It is recommended that procedures for closing RSD cases include procedures for bringing forward and closing cases where the refugee status claim was deemed abandoned. The RSD cases of Applicants who have withdrawn their refugee status or appeal application should be closed upon receipt of the withdrawal request or as soon as practicable thereafter.

Appropriate storage requirements for closed RSD cases should be set out in the UNHCR Offices file management procedures (see § 2.2.6 – *Storing and Archiving Closed RSD Files*).

9.2 Re-opening RSD Cases

9.2.1 General Considerations

UNHCR Offices should adopt procedures for processing applications by individuals who have closed RSD cases with UNHCR to determine whether case re-opening is appropriate. Re-opening of closed RSD cases may be justified in the following circumstances.

(a) Withdrawn refugee status or appeal applications

Applicants whose claims **have been withdrawn before the first instance or appeal decision** was issued and who subsequently seek to apply for RSD should have their RSD case re-opened and referred to first instance or appeal RSD procedures, as appropriate in accordance with the principles set out in § 9.2.1(d) – *Stage at which the RSD case is re-opened* below.

(b) Refugee status or appeal applications deemed abandoned

Offices should adopt a flexible approach to the **re-opening of closed cases that were considered to be abandoned** after the Applicant failed to attend the first instance or appeal RSD Interview or to contact the UNHCR Offices within the six weeks following the scheduled Interview. Requests to re-open the case and to reschedule the missed Interview should generally be granted unless an Applicant has missed several scheduled Interviews without a valid explanation, and there is good reason to believe the Applicant is not acting in good faith. Given the potential protection implications of not having a refugee status claim determined for an Applicant who has registered with UNHCR, decisions not to re-open the RSD case should only be made in exceptional circumstances and only with the authorization of the RSD Supervisor. The reasons for the decision not to re-open the case and to reschedule the first instance or appeal RSD Interview should be clearly recorded on the Applicant's file. Where a re-opening is considered appropriate, the case should be referred to first instance or appeal RSD procedures, as appropriate in accordance with the principles set out in § 9.2.1(d) – *Stage at which the RSD case is re-opened* below.

The same approach should apply in instances where the RSD cases are closed on the basis of reliable information regarding the Applicant's death, his/her naturalization in the host country/country of asylum or a third country, his/her onward movement to a third country, or voluntary or forcible return to the country of nationality or former habitual residence. Where a re-opening is considered appropriate, the case should be referred to first instance RSD procedures if the claim was deemed abandoned at first instance, or to appeal procedures if the claim was deemed abandoned at that stage. Exceptionally, where there is reliable information of a significant change in the personal circumstances of the Applicant or the conditions in the Applicant's country of nationality/former habitual residence, the case should be referred to first instance procedures.

(c) Final decisions (first instance or appeal)

As a general rule, Applicants whose refugee claims have been **duly examined and rejected under UNHCR RSD procedures, and whose cases have been closed**, should not have their claims re-examined. These include Applicants whose claims were rejected on appeal or who have failed to exercise the right to appeal a first instance negative RSD decision within prescribed period. However, in certain cases, it may be appropriate to re-open a closed case and to refer the individual to RSD procedures.

In the case of **Applicants whose claims were rejected at first instance and had their RSD cases closed as a result of failing to file an appeal application**, if the Office is not able to establish that the Applicant was duly notified of the negative decision and the relevant appeal deadline, the case should be re-opened for the purposes of examining the appeal.

Even if the Applicant was duly notified of the negative decision and appeal deadline, claims rejected in final instance⁸ should also be re-opened and referred to first instance or appeal RSD procedures, as appropriate (see § 9.2.1(d) – *Stage at which the RSD case is re-opened*), in the following circumstances.

STANDARDS & GUIDELINES

APPROPRIATE CASES FOR RE-OPENING OF CLAIMS REJECTED IN FINAL INSTANCE:

- ▶ There is reliable information of a **significant change in the personal circumstances** of the Applicant or the **conditions in the Applicant's country of nationality/habitual residence** that may substantially affect eligibility for refugee status, including under criteria for a *sur place* claim;
- ▶ UNHCR receives **reliable and material new information** indicating that the **claim may have been improperly decided**. "New" information means information that was not before the Eligibility Officer at the time of the RSD or appeal procedure. If the information was available to the Applicant at the time of the previous RSD or appeal procedure, he/she should provide a credible and reasonable explanation for having failed to provide it to UNHCR;
- ▶ There is **serious reason to believe that the claim was improperly decided** and/or that grounds for eligibility for refugee status were not adequately examined or addressed.

(d) Stage at which the RSD case is re-opened

Where a re-opening is considered appropriate, a RSD case that was **withdrawn or deemed abandoned** should generally be re-opened at the stage at which it was closed (i.e. at first instance or on appeal).

For Applicants whose claims were **rejected in final instance** (whether on appeal or at first instance where an appeal application was not filed), the RSD case should generally be referred to **appeal procedures** if re-opened. This includes cases where there is serious reason to believe or reliable and material new information indicating that the claim may have been improperly decided or that the grounds for eligibility for refugee status were not adequately examined or addressed. Exceptionally, where the request for re-opening is based on completely **new grounds** which were not disclosed at the time of the initial RSD and/or appeal procedure, the case should be referred to **first instance RSD procedures**, provided that the Applicant has a reasonable explanation for not having disclosed these grounds at the time of the initial RSD and/or appeal procedure.⁹

⁸ Rejected in "final instance" means rejected at first instance where an appeal application is not filed within the prescribed timeframe for appeal or rejected on appeal.

⁹ For instance, there may be cases where Applicants chose not to disclose SGBV or SOGI claims at the time of the initial procedures due to stigma, shame, cultural taboos, etc.

Irrespective of the reason for closure, if there is reliable information of a significant change in the Applicant's personal circumstances or situation in his/her country of nationality/former habitual residence that may substantially affect eligibility for refugee status, the RSD case should generally be **re-opened at first instance** since the new information would essentially amount to a new claim.

9.2.2 Re-opening Procedures

As a general rule, applications for re-opening a RSD case should be made **in writing and outline the reasons for the request**, including any new or additional information submitted in support of the request. Exceptionally, application for re-opening may be made in person by illiterate Applicants or Applicants who need special assistance in RSD procedures. These may include unaccompanied children of a young age, Applicants with mental conditions or physical or intellectual disabilities, and Applicants in detention. The reasons for requesting the re-opening of the RSD case and supporting information should be duly noted on the Applicant's file.

Procedures for re-opening of RSD cases of Applicants whose claims were rejected in final instance, should include a **screening of the application for re-opening** and relevant information on the file by an Eligibility Officer or other member of the Protection staff, who should assess whether the established criteria for re-opening an RSD case are met, and make a recommendation.¹⁰ Wherever possible, the Eligibility Officer or Protection staff member dealing with the re-opening application should not have been involved in the determination of the case sought to be re-opened.

A recommendation to re-open, or not to reopen a closed RSD case must state the reasons for the recommendation and whether the case should be re-opened at first instance or on appeal, where applicable. A recommendation to re-open a closed RSD case must be reviewed and **approved by the RSD Supervisor**, or another Protection staff member authorized to approve the re-opening. Wherever possible, random checks of decisions not to re-open RSD cases should be carried out by the RSD Supervisor or a designated RSD staff member. The recommendation to re-open, or not to reopen a RSD case and reasons thereof must be recorded on the Applicant's file.

As a general rule, applications for re-opening should not be rejected without some form of screening procedure. Where the volume of Applications for case re-opening received by a UNHCR Office exceeds the operational capacity to conduct effective screening, the UNHCR Office should assess all procedural or other factors that may be contributing to the high volume, and consult with the relevant regional Bureau and DIP to coordinate an appropriate response.

Applicants should be informed, in a timely manner, whether their re-opening request has been granted or not. Wherever possible, Applicants should be informed of the reason(s) for a refusal to re-open the case.

¹⁰ If a decision to re-open, or not to reopen cannot be reached as a result of the screening of the application and a review of relevant information on the Applicant's file, a protection interview with the Applicant may exceptionally be conducted in order to determine whether a re-opening is warranted given the circumstances of the case. For instance, an interview may be needed in order to examine or clarify any new or additional information provided to UNHCR in support of the re-opening application.



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