

After a Home Office refusal

If your asylum or immigration application is refused by the Home Office, you should try and get legal advice.

If you do not have a lawyer, there may be things you can do yourself and with the help of supporters.

This section looks at: the right to appeal a Home Office refusal; administrative reviews for immigration decisions without appeal rights; what to do after a refusal of an asylum or human rights claim; country guidance information; expert evidence; and objective evidence.

Appeals

There is currently only the right of appeal within the UK if the Home Office refuse an application based on:

- an "international protection" claim (asylum or Humanitarian Protection applications),
- a decision to revoke Refugee Status or Humanitarian Protection
- a human rights claim, or
- a decision on an EU Settled Status application made after 31 January 2020.

See Toolkit section, *Appeals*.

Not all applications based on human rights or protection grounds have a right of appeal.

For example, you do not have the right of appeal in the UK if your asylum or human rights claim is certified by the Home Office because they think it is "clearly unfounded".

If you are making a human rights claim when you are subject to deportation after a criminal sentence, the Home Office may certify the claim unless you can show that "serious and irreversible harm" would occur if you had to appeal outside of the UK. The Home Office is less likely to certify your claim if your child is a British citizen.

If your claim is certified, you may be able to appeal the negative decision on your application from outside of the UK. It may also be possible to challenge the certification of your claim through a judicial review.

If you made your application before 6 April 2015 you may still have the right of appeal if you are refused.

In the case of a visa refusal, the simplest option may be to reapply, submitting a new application form with new evidence and a new fee. This is only likely to work if you are able to fix the things that led to a refusal (submitting insufficient evidence, for example).

Administrative review

If your immigration application is refused and you do not have the right to appeal the decision, you may be able to apply for administrative review. This is where you apply to the Home Office to review the decision it has made.

You can apply for administrative review in some circumstances even if you are granted leave to remain, but are not happy with the length of leave given or the conditions imposed.

Not everyone will have the right to ask for an administrative review. People applying for visitor visas, for example, do not have the right to review. Nor do family members applying for the right to stay under the Family Migration immigration rules. See the Toolkit section *Family Members* for more on this.

Your refusal letter will tell you if you have the right to apply for a review, and will tell you how to apply.

There is a separate process for administrative reviews of EU Settled Status decisions. Read more here: <https://www.gov.uk/guidance/eu-settlement-scheme-apply-for-an-administrative-review>

Administrative review will only be available if the error you believe the Home Office has made could have made a difference to the decision. It can be used to resolve “case-working errors” on a number of grounds. See page 21 of the Home Office guidance for more information: <http://bit.ly/adminrev7>

The review will be carried out by someone other than the original decision maker.

If you are already in the UK, you need to apply for an administrative review within **14 calendar days** of getting the decision, or **7 calendar days if you are detained**. It costs £80 (which will be refunded if you are successful in overturning the decision through the review).

For information on administrative reviews if you are applying from outside of the UK, see the Home Office website: <http://bit.ly/askforadreview>

No new evidence can be submitted when applying for an administrative review, apart from certain circumstances (see: <http://bit.ly/appendix-AR>) when you are providing new evidence to demonstrate a case-working error in the Home Office decision. In any case, you may be asked at a later date to send new information or documents. *You can submit new evidence in administrative reviews of EU Settled Status decisions.*

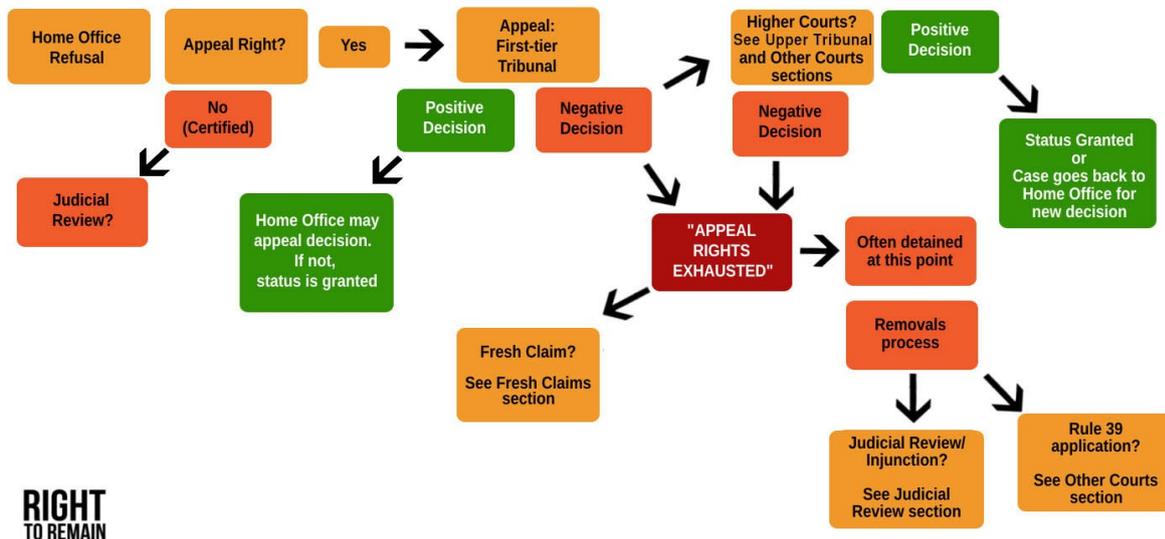
In most cases, you should not be removed from the UK until your review has been completed. However, if you ask for a review but the Home Office position is that its outcome

would not make a difference to the decision to remove/deport you, a review will not prevent removal taking place. This includes if you are facing automatic deportation or your case is a national security case.

You can't request a second review, unless the result included new reasons why you were refused. If the review doesn't result in your being granted leave to remain (or a change to the time period or conditions of your leave, if that was what you have requested to be reviewed), you may be able to apply for judicial review of the administrative review decision.

After an asylum or human rights refusal

After an asylum or human rights refusal



ACTION SECTION

If you receive a refusal on your case from the Home Office or the courts by post, **keep the envelope**. You may need to prove when it was posted, and the actual day you received it. Write the date you received it next to the postmark.

Go through every paragraph of the refusal letter and write comments.

Are there mistakes such as dates or places in your story? Can you identify how these errors have occurred? For example, is the error also recorded in the written transcript of your asylum interview? If it is, you may also need to check the audio recording of your interview. Was it a mistake in interpretation?

Look at your other documents to identify when the error has occurred.

These might include the record of an asylum screening interview, asylum interview, or any statements/evidence submitted to the Home Office. An asylum reasons for Refusal Letter (RFRL) may reference the different documents with abbreviations: Screening Interview (SCI), Asylum Interview Record (AIR), Witness Statement (WS).

Are you missing any of the documents that are referred to?

If you do not have one or more of these documents, you can either ask the lawyer that was handling your case at that stage (if you had one), or you can request that the Home Office send you a copy of your file. This is called a **subject access request** and you should receive a response within one month, although it will take longer if you do not provide the Home Office with the information they need to establish your identity.

You can read more about subject access requests on the Home Office website: <https://www.gov.uk/government/publications/requests-for-personal-data-uk-visas-and-immigration>

Some requests are currently being refused because the 2018 Data Protection Act gives the Home Office the power to refuse to share personal information under an “immigration exemption”. At the time of writing, some people are still succeeding in obtaining their files.

Have all areas of your claim been considered? If you are claiming asylum, has it been considered under the correct Refugee Convention grounds?

If you are applying under **human rights grounds as well as claiming asylum**, have these been considered properly in the decision letter? For example, if you have claimed asylum *and* applied to stay under Article 8 (family and private life), has your Article 8 case been considered in the decision?

You can write a statement about the things you think are wrong with the refusal letter. You can get a friend/supporter to help with this if you find writing in English difficult. If you have a lawyer, they should write and submit this statement for you. You should submit this statement to the Home Office and, if you have the right of appeal, to the court in advance of your appeal hearing.

What **evidence** can you find to support your statement? This might be evidence specific to your case, country of origin information, expert evidence. See below for more information.

Have there been problems because you couldn't remember something clearly, especially if the event was traumatic? You can find useful resources about **memory recall and traumatic events** on the Centre for the Study of Emotion and Law website.

Country guidance information

Country guidance information (included that used by the Home Office) may be helpful for your case if what you said happened or could happen is supported by general evidence

about your country. If information about your country suggests you would be safe, you will need to either show that that information is incorrect/out of date, or that your specific situation does not fit the general pattern.

When making a decision on your claim, the Home Office will refer to their internal country guidance notes. The Home Office guidance for your home country may be flawed – it may be out of date, or not reflect the concerns of human rights organisations. You can find the Home Office’s country documents here: <https://www.gov.uk/government/collections/country-information-and-guidance>

The Home Office guidance, and your Reasons for Refusal Letter, will refer to country guidance cases. These are asylum appeals chosen by the immigration tribunal to give legal guidance for a particular country, or a particular group of people in a particular country. The decisions in these cases are assumed to be based on the best possible evidence about that country at that time. Until there are significant changes in that country, a country guidance decision sets out the law for other people seeking asylum from that country. You can find the latest country guidance decisions here: <http://bit.ly/trib-decisions>

These cases can be quite old and may not reflect a current or changing situation. Your individual case might not also be different from the circumstances explored in the country guidance case relevant to your case. These cases may in fact be useful to your situation – the Home Office refusal letter may only refer to cases/paragraphs that support their decisions. Other cases/ decisions might contradict that.

Expert Evidence

Expert evidence may be obtained by your lawyer if your case goes to appeal, but it is something you or a supporter can think about as well. Evidence could come from an academic, university researcher, or experienced professional who is an expert on your country of origin, or a particular aspect of your case (women’s rights in a certain region, an ethnicity, a religious minority, etc). They can be asked to look at your testimony and comment on whether it fits with what they know about the subject. They could also be asked to comment on why your case might not fit the general pattern.

Note: you are not asking the expert to say whether or not you are telling the truth. You are asking them to use their knowledge to comment on how your story fits into known information on that topic.

Usually, a lawyer will “instruct” an expert, and pay them a fee. This fee will normally be covered by legal aid, if your case is eligible for this.

An expert may be useful in other aspects of a case too. If there are reasons why you can’t give testimony easily, because of memory or psychological problems, they can comment on this. If there have been problems understanding things, an expert could comment on language problems or learning difficulties.

If your case includes a claim to a family or private life in the UK (see Toolkit section *Human Rights*), a teacher, psychologist, psychiatrist or social worker may be able to comment on

ACTION SECTION

- If you are unrepresented, you could try contacting experts yourself. If a supporter or local group has connections to an NGO or a university, they may be able to find an expert who is willing to do this for free.
- You could also try contacting the experts listed on the Refugee Legal Aid Information website www.refugeelegalaidinformation.org or on the EIN website: www.ein.org.uk/experts/country
- If the expert cannot produce an expert report for free, a reasonable price might be £300-£400.
- Remember this amount is just for producing the report.
- An expert may not be required to attend the appeal, especially if they have simply verified they think a document is genuine, but you should check that the expert would be willing to appear in court just in case. If you are paying the expert yourself, they may ask for more money if they are required to come to court.
- If the expert asks to be paid, your friends/community could consider fundraising for this. You need to decide if this is a good use of funds – is there a crucial element of your case that the Home Office doesn't believe, that an expert report could realistically help?

the impact the removal/deportation of you or your child might have on their development.

You may find it useful to look at the 'Best Practice Guide to Asylum and Human Rights Appeals' section on expert evidence: www.ein.org.uk/bpg/chapter/19

This is a guide written by lawyers for lawyers, but you may find parts of it helpful or be able to ask someone with legal knowledge to help you go through and read what an “expert” in this context is, and what they can and can't say.

Objective Evidence

When challenging a Home Office refusal of your asylum or human rights claim, especially if you are appealing the decision, you may need objective evidence. Objective evidence may be general information about the situation in your country, from reliable sources such as human rights organisations or trusted media sources. It could also include an expert statement on your country or situation (see above).

Objective evidence is especially important if your credibility has been questioned by the Home Office, because the evidence isn't based on what *you* say happened or could

happen.

The evidence needs to be relevant to your asylum claim (your fear of persecution) and either cover the time period when your previous persecution occurred, or be recent evidence if you are talking about a future fear of persecution.

Finding objective evidence for an asylum/human rights claim

Objective evidence in this section refers to sources that aren't connected to you. Generally, good places to find this evidence are through human rights organisations or reputable media sources.

Good places to look for information on human rights in a country of origin:

- Amnesty International
- Human Rights Watch
- UNHCR RefWorld
- Voice of America news
- International Crisis Group
- BBC World News
- European COI Network
- US State Department

See the Toolkit webpage for links, and For more suggestions of where to look for evidence, see the country information page on the Right to Remain website, where sources are also listed thematically: www.righttoremain.org.uk/coi

All the sources listed above are all considered to be reliable sources of information, which have a good reputation for being accurate, and the media sources listed are ones that have good world news sections and are interested in human rights. If you are getting evidence from other sources, think about who has written the report or article. If it's a group that is in opposition to a government, the Home Office and the courts might not consider it to be objective/good evidence.

ACTION SECTION: after a refusal

Think about what might happen next, and make a plan of action.

After a refusal, you need to think about what your options are and what might come next. If you have made an immigration application and it has been refused, read the information above about administrative review and appeal rights. If you have made an asylum or human rights claim and it has been refused, use the diagram above to

see what the process involves after this point.

Stay strong, and look after yourself.

Going through the asylum and immigration system is very difficult and stressful. Sometimes it can be hard to think about anything else. But constant worry about your case can leave you feeling emotionally exhausted, and less able to cope with the process.

Everyone has a different way of coping – think about what works for you. While your immigration status is of course very important, it's also important to try and give yourself a break from thinking about it. Think about activities that can distract you or help you relax for at least a short period every day, which can help your mind and body recover a little.

Talk to people you trust. You may be very upset or even feel ashamed if your application/claim is refused, but don't hide it from people. You're going to need people to help you - don't be afraid to ask for their solidarity. Don't leave it till it's too late for them to do anything.

You may wish to go and speak to your MP about your refusal, especially if you don't have the right to appeal. Think about how to explain what has happened clearly and calmly. What has gone wrong? Why is the decision unjust? What do you want the MP to do about it?

Read more here: www.righttoremain.org.uk/toolkit/politicians

Next section: *Appeals*