

Immigration Advice and Information

Making a Fresh Claim for Asylum

This is one of a series of Advice Sheets designed by Greater Manchester Immigration Aid Unit for people who have claimed asylum and want to know more about their rights. This advice sheet is written to help you understand the legal situation you may be in, together with some practical tips about what you or your friends or supporters can do to help you make a Fresh Claim.

Here is a summary of some of the legal terms that are used in this advice sheet.

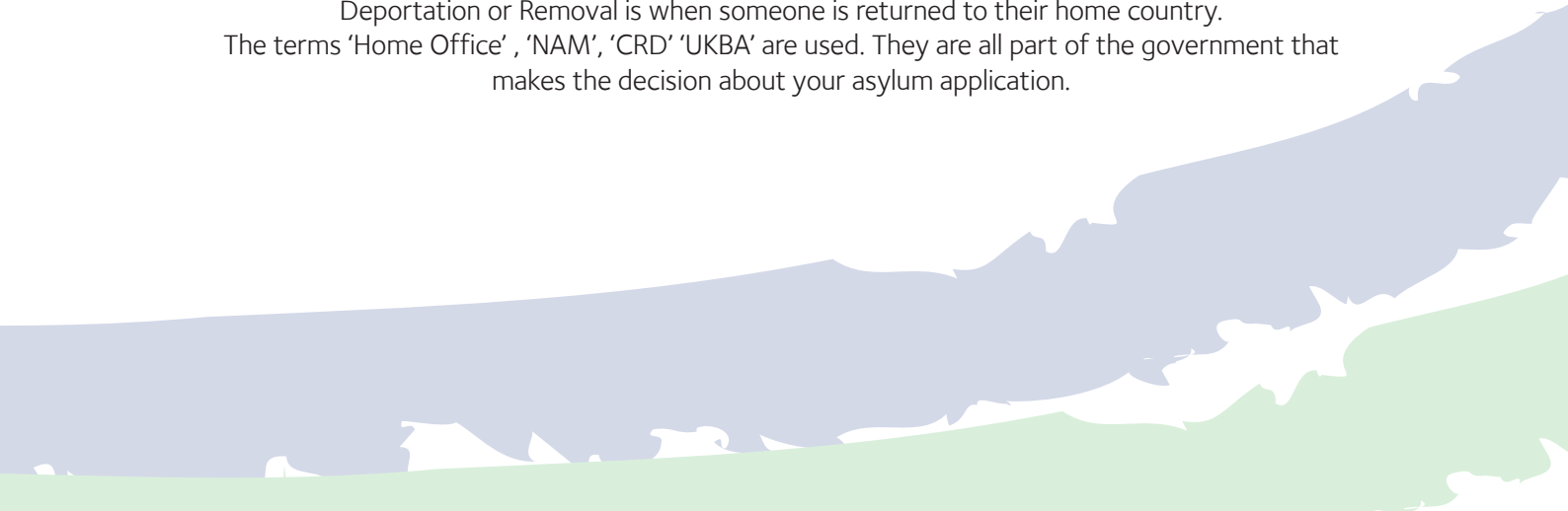
Leave to Enter is permission to enter the UK

Leave to Remain is permission to stay in the UK

Dallas Court is the centre where people who are claiming asylum in Greater Manchester have to sign on.

Deportation or Removal is when someone is returned to their home country.

The terms 'Home Office', 'NAM', 'CRD' 'UKBA' are used. They are all part of the government that makes the decision about your asylum application.



Understanding Fresh Claims

Many people in detention will be people who have claimed asylum who have had their asylum claims refused, have exhausted their appeal rights, and are being detained for the purpose of removal.

The only way in which someone in this position can prevent removal is to make a fresh claim for asylum.

A fresh claim for asylum is defined in the Immigration Rules as:

“Fresh Claims

353. When a human rights or asylum claim has been refused and any appeal relating to that claim is no longer pending, the decision maker will consider any further submissions and, if rejected, will then determine whether they amount to a fresh claim. The submissions will amount to a fresh claim if they are significantly different from the material that has previously been considered. The submissions will only be significantly different if the content:

- (i) had not already been considered; and
- (ii) taken together with the previously considered material, created a realistic prospect of success, notwithstanding its rejection.

This paragraph does not apply to claims made overseas.

353A. Consideration of further submissions shall be subject to the procedures set out in these Rules. An applicant who has made further submissions shall not be removed before the Secretary of State has considered the submissions under paragraph 353 or otherwise.

This paragraph does not apply to submissions made overseas.”

Put more simply, to be able to make a fresh claim you need to be able to show two things:

1. that there is some new evidence or change in circumstances which has not been considered by the Home Office,

2. that this new evidence will make a difference to the outcome of the case. This means that there is some chance that the new evidence will show that you, the person claiming asylum, would be at risk of persecution in your own country.

(i) Types of fresh claim

If there is no new evidence and nothing has changed then there is no possibility of making a fresh claim and it is likely that nothing can be done to prevent removal.

Not everyone who feels that their asylum claim has been dealt with unfairly, and that the decision to refuse was wrong, will be able to make a fresh claim! If the new evidence would not make a difference to the outcome of the case then again, a person cannot make a fresh claim. Some of the most common circumstances where a person can make a fresh claim are set out below:

(i) Disclosure.

Where you have not felt able to tell the Home Office or the Immigration Judge about everything that happened to you. It is hard sometimes for people to say at such an early stage that they have been tortured or raped. But if the Home Office or the Immigration Judge did not believe that you were telling the truth in your first asylum claim then it is likely that you are going to need medical evidence from an organisation like the Medical Foundation for the Care of Victims of Torture to back up this kind of fresh claim.

(ii) New Documents.

You have received some important documents from your own country, which you did not have when your first asylum claim was considered. These could be things like arrest warrants, summons, newspaper articles or threatening letters, which show that the Government in your country is still looking for you. Make sure that you can explain how you got hold of the documents, and if they were sent to you, keep the envelope that they arrived in. If the documents are not in English, you are going to have to get them translated. However, if the judge who heard your appeal did not believe you were telling the truth, it is likely that your documents may be thought to be fake. If you can, you should see if you can get the documents authenticated by someone who is an expert on your country.

(iii) Change in the Law.

There may have been an important change in the law in relation to your country. From time to time the courts in this country issue what are called “country guidance cases”. These consider which people from a particular country would be at risk. It may be that a new case will decide that you are in one of the categories of people who would be at risk. Keep in touch with community organisations who represent people from your country so that you can find out about these changes in the law. But remember that it will not help you if the Home Office or court did not believe that you belonged to that category of people.

(iv) Change in Conditions in Your Country.

There has been a change in the political situation in your country. For example, there has been an increase in the number of human rights abuses which show that even low-level political activists would be at risk.

(v) Religious Conversion.

You have converted to a different religion after your asylum claim was refused, and people who belong to your new religion are persecuted in your country. You will need a statement of support from the leader of the church or other religious group that you go to, or your religious conversion is unlikely to be accepted as genuine. You could also gather statements from other members of the congregation who know you and can say that you have converted.

(vi) Serious Illness – Mental or Physical condition.

Mental or Physical condition. You have been diagnosed with cancer, a heart or kidney condition, HIV or another serious illness. **Please be aware that it is very difficult to succeed on a fresh claim based on medical grounds, you have to be extremely seriously ill and you have to be dependent on medical treatment to stay alive.** Just being diagnosed with a serious illness, if you are still healthy, will not give you grounds to make a fresh claim, even if treatment is not available in your country.

(vii) Sexuality.

You have “come out” as gay or lesbian since your first asylum claim was refused, and gay and lesbian people are not accepted in your country. You will need to get statements of support from your current or previous partners or people who know you to support this kind of fresh claim.

(viii) Activities in the UK.

You have become involved in politics in the UK, and you are afraid that the authorities in your own country will know about this so you will be at risk if you go back. You will need a letter of support from your political party explaining what your role is with them and also why they think that the authorities in your country would know about your political activities.

(ix) Family life

You have developed family life in the UK since you were refused asylum and your partner/children are settled in the UK and cannot be expected to follow you to your country of origin. You can argue that to remove you would be a breach of your rights under Article 8 of the European Convention on Human Rights.

(ii) Fresh claim procedure

There are two ways in which the Home Office will accept a fresh claim:

a) If you claimed asylum after March 2007 your asylum claim was dealt by one of the New Asylum Model (NAM) teams located throughout the country. In this case you should submit your new evidence and your representations at the reporting centre where you have been asked to report periodically either by making an appointment or during your regular reporting appointment. The reporting centre will forward your evidence and representations to your former NAM caseworker (if they are still working for the Home Office) or the NAM team who dealt with your asylum application. The NAM caseworker or the team will be responsible for making a decision on your fresh claim.

b) In your claimed asylum before March 2007 you should make an appointment with the Liverpool Further Submissions Unit (FSU) which is managed by the Case Resolution Directorate (CRD) in Liverpool. You will need to call the following number 0151 237 0980 and you will be asked your contact details (name, address, telephone number, home office reference number and name of any dependents) and will be given an appointment usually within 2 weeks time. Your appointment will take place at the Home Office in Liverpool and you will have to attend in person together with any dependents. Prior to this appointment you will be sent an appointment letter

and a form, which you will need to fill in and attach to it all the evidence you have and 4 passport photographs. When you attend your interview do not forget to bring with you evidence of your identity as may not be allowed in the building otherwise.

c) If you are detained you should give your new evidence to the local immigration officers who will forward it to the relevant department (NAM caseworker/team or CRD) for a decision.

It usually takes a very long time for the Home Office to make a decision on a fresh claim. This is because the Home Office have a large backlog of cases, called the "legacy" which they have said will take them until July 2011 to deal with. Usually a fresh claim that goes back to your NAM caseworker/team for consideration should take less time to decide. Once a person has made a fresh claim, then they will become entitled to NASS support, and if they are not released, would have a very good chance of being granted bail.

However, sometimes if a person makes a fresh claim while they are in detention pending removal UKBA will make a decision very quickly, almost certainly a decision to refuse. If it is not accepted by UKBA that the application meets the legal test to be a fresh claim, then the only way of challenging this decision is by Judicial Review. This would have to be done extremely urgently in order to prevent removal.

(iii) Information a person will need to make a fresh claim

The following documents would be needed to assess whether or not someone has grounds to make a fresh claim:

- 1) Home Offices Reasons for refusal letter
- 2) Asylum Interview record
- 3) Asylum statement
- 4) Appeal witness statement
- 5) Immigration Judge's Determination – this is the document prepared by the Immigration Judge who heard the appeal. **This document is very important when making a fresh claim for asylum as it will identify what parts of the earlier claim were believed or not**

If you do not have the full file of papers then you can ask for a copy of your file from UKBA. You should write to:

Data Protection Unit
UKBA
Lunar House
40 Wellesley Road
Croydon
CR9 2BY

You must enclose a cheque/postal order for £10. Unfortunately it can take several months for UKBA to send the file.

(iv) Common problems with fresh claims

Even if there is new evidence it still might not be possible to make a fresh claim. Some of the common problems with new evidence are set out below:

(i) "Dodgy" documents. If it wasn't believed that you were telling the truth in your first claim, and you cannot get your new documents authenticated, then they are unlikely to be accepted as genuine. This is particularly a problem in relation to certain countries where the evidence is that even genuine documents can be easily obtained by paying a bribe, and lots of people before you have tried to use false documents in their asylum claims. Or you could have a problem if your documents contradict what you have said before. You need to look very carefully at documents that are sent to you from your own country. Do the dates make sense? Are you sure that the documents are genuine?

(ii) Non-serious health problem. You have a health problem, but it is not serious enough for you to be able to meet the high threshold in this kind of case.

(iii) Independent evidence. You do not have any new independent evidence. If you have not been believed to be telling the truth before, then anything you say now will not be accepted, unless it is supported by some evidence which comes from an independent source. So, for example, if you have a letter from your mother saying that your brother has been arrested for the same reasons that you fled the country, this will not help you very much because you could easily have written this letter yourself, and you have already been found to not be telling the truth.

For a list of immigration advice providers in Greater Manchester contact us on 0161 740 7722