

# Asylum Advice

Post Decisions  
– Refusal



# Section 4B:

## Post Decisions - Refusal

This section explains what happens if your application is refused. If you have questions that are specific to your asylum claim you should raise these with your legal representative who will be able to give you advice.

### 4B.1 Options available following a refusal

Following your asylum interview the Home Office may decide to refuse your claim for asylum. You may have a right to appeal against the Home Office decision. If the Home Office refuses your claim it will provide a letter setting out the reasons. The letter will be written in English and you should discuss the contents with your legal representative if you need to. The letter will confirm why the Home Office believes that you do not meet the grounds for asylum or humanitarian protection. You need to carefully consider your options at this stage.

You have the following options:

- You may have the right to appeal against the Home Office decision. This means you can ask an Immigration Judge, who is independent from the Home Office, to look at the decision and decide whether they agree with it. You need to discuss this with your legal representative. Please note that there are strict timescales for appealing against the Home Office decision.
- If you receive a “certified refusal” this means that you do not have an automatic right to appeal. You may however be able to apply for a Judicial Review. You will need to discuss this with your legal representative. Your legal representative will only be able to apply for a Judicial Review if there are grounds to do so.
- If you do not wish to appeal then the Assisted Voluntary Return scheme (AVR) is the most suitable way to leave the United Kingdom (UK). The AVR scheme is run by the Home Office, please see:

[www.gov.uk/return-home-voluntarily](http://www.gov.uk/return-home-voluntarily)  
Voluntary Departures Team: 0300 004 0202

### 4B.2 If you choose to appeal

If your case is refused by the Home Office and you choose to use your right to appeal, you will need to contact your legal representative as soon as you have received notification that your claim has been refused. They will need to arrange an

appointment with you to discuss your refusal and to establish the grounds of appeal. For a legal representative to represent you under legal aid (which helps with the costs of legal advice) you will need to show that you are on a low income and that your case has a realistic chance of success. This means that legal aid will only be granted if your case has a 50% or more chance of success. Your legal representative will complete a merit test to determine whether this is the case. If you fail the merit test you will be refused legal aid.

### 4B.3 What if I am refused Legal Aid?

You or your legal representative can ask for the refusal of legal aid to be reconsidered. Please ask your legal representative about appealing the refusal of legal aid.

If you are unable to access legal aid and your legal representative is able to work privately for you, you will have to pay for this legal advice. They must explain to you, and you must agree to their terms of business before they can start working for you privately.

If you are refused legal aid, and cannot afford to pay for legal advice, you will be able to represent yourself if you choose to.

### 4B.4 Appeal Hearing

Appeal hearings are heard at the Asylum Immigration Tribunal (AIT). There are a number of courts in England. You will be notified of which court your hearing will take place in, once your appeal has been submitted. There are two tribunals, a First-tier Tribunal and an Upper Tribunal. There is an Immigration and Asylum Chamber in each. There are a number of courts around the UK. The role of the First-tier Tribunal is to hear and decide appeals against decisions made by the Home Office.

Once your appeal hearing date has been set for you, you will receive a letter confirming the date, time and place of your court hearing. If you are supported by the Home Office then you can apply to it for travel tickets. You will need to send a copy of your hearing letter and a request for tickets. You must do this at the earliest opportunity. Asylum Help can assist you to do this. Please contact 0808 8000 630 if you need help and support to do this.

An Asylum Immigration Tribunal (AIT) may decide (at any time before the substantive hearing) that the issues arising in a particular case are complex and may therefore direct that the case should be heard before an Immigration Panel or before a Senior Immigration Judge.

It is important that you arrive at least 30 minutes before your hearing at the hearing centre. You will need to go through security and find out which room your hearing is taking place in. During your hearing you may find that the following people are in the room:

- Immigration Judge: they will sit in the front of the room on a raised platform. They will lead the hearing and are likely to ask you, your legal representative, and the Home Office Presenting Officer questions about your case.
- Home Office Presenting Officer: you may find that the Home Office has sent a representative to present their side of your case and defend the reasons for not granting you leave to remain in the UK.
- Witnesses': any witnesses called to give evidence in your case.
- Court interpreter: if you have requested an interpreter then they will interpret any questions the judge asks you and interpret your response. They must interpret what you say accurately so that the Home Office has a full record of the information you provide.

Interpreters are required to keep any information you provide strictly confidential. If you have any concerns about your interpreter or do not fully understand their accent or dialect you should raise this with your legal representative and the Immigration Judge as early as possible. It will not affect how your case is decided or the outcome of your case.

Courtrooms are public places so you may also find that there are other people in the room.

## 4B.5 Adjournments

A request for an adjournment (postponement) may be made to the AIT by you or by your representative at any time after the hearing date is set and before your hearing date. The request may be made at the Case Management Review Hearing. You or your representative may argue that more time is needed to obtain evidence to support your appeal (such as a medical report or documents from abroad).

The judge, the Home Office or your legal representative may request an adjournment if an issue comes up during your appeal hearing that needs further investigation.

If you have documents in your home country that you think are important, you should discuss this with your legal advisor as soon as possible. It may be possible to delay the consideration of your claim while you arrange for these documents to be sent here, providing it is safe for you or your family to do so.

If the judge decides to adjourn the hearing a revised date should be given. This should not be more than 28 days after the original hearing date unless there are exceptional circumstances.

The judge may decide not to adjourn and you will have to attend the court. If you do not your case may still be decided without you being present.

## 4B.6 During your Appeal Hearing

You must answer the judge fully and with as much information as you can give. The judge, your legal representative and the Home Office representative may discuss how the law applies in your case.

You may feel that you do not want to talk about certain issues, particularly personal or sensitive matters, but the issues that are often very difficult to discuss can be vital evidence to establish your claim. All the information you are able to provide will help the judge to better understand your reasons for seeking protection.

It is essential that you tell the truth and provide as much information as you can about what happened to you and why you need protection.

You may not know what decision the judge has reached as soon as your hearing has finished. The judge will take your papers away with them and have a look at the case and then make a decision. The decision will then be sent to you.

The judge will consider your asylum appeal by applying the 'Refugee Convention' and the 'European Convention of Human Rights' to the individual circumstances of your claim. They will look to see if you have ground to stay in the UK.

The judge will send both you (and your legal representative) and the Home Office a copy of the determination (the decision). The determination will confirm whether the judge believes that you meet any criteria for leave to remain. He or she will either allow your appeal or dismiss (refuse) your appeal. The determination will include the reasoning behind the judge's decision.

## 4B.7 After the decision is made

In certain circumstances both you and the Home Office will be able to appeal. If you are in the UK the deadline is 10 days; if you are in detention the appeal deadline is 5 days, and if you are outside of the UK the deadline is 28 days. An application for permission to appeal will need to be made to the Asylum Immigration Tribunal's Upper Tribunal. At this stage you or the Home Office will only be granted permission if there are grounds to prove that an error in law may have been made in your case.

In England the Upper Tribunal (Immigration and Asylum Chamber) court will deal with:

- appeals against decisions made by the First-tier Tribunal in matters of immigration, asylum and nationality and;
- certain judicial reviews (Immigration).

In Scotland your case may appear before the Court of Sessions.

In Northern Ireland this will be with the Queen's Bench Division.

Your legal representative will be able to give you more information about these matters.

Further rights of appeal may exist in some circumstances and you are advised to talk to your legal advisor.

If you need assistance to find a legal representative please contact:

**Asylum Advice UK – 0808 8000 630**  
**[www.asylumhelpuk.org](http://www.asylumhelpuk.org)**

**Please note that we are unable to provide any assistance with your immigration matters.**

## 4B.8 What Happens After my Appeal?

**Receiving a Positive Decision** - If you receive a positive determination and your case is allowed, and the Home Office does not appeal, then you should receive confirmation from the Home Office that you have been granted Leave to Remain in the UK. (Please read post decision grants.)

**A Further appeal** - If you or the Home Office appeal the decision and permission to appeal is granted, the tribunal will arrange a reconsideration hearing. You will continue to be an Asylum Seeker while waiting for the tribunal to make another decision. This will either be allowed or dismissed once your case has been heard.

**No further appeals** - If, following the court determination, there are no grounds to appeal, or further permission refused then you will become 'Appeal Rights Exhausted (ARE)'. This means that you stop being an Asylum Seeker because your asylum claim has failed.

If you have no further appeals outstanding the Home Office will expect you to leave the UK:

The Home Office will expect you to leave the UK if you:

- are refused asylum and not granted any leave;
- have arrived at the end of the appeal process; or
- withdraw your asylum application.

## 4B.9 If I choose to leave the UK voluntarily

There are two options available to assist you if you choose to return home:

- 1) You can apply to the Assisted Voluntary Returns programme via the Home Office, for more information how to contact them visit:  
[www.gov.uk/return-home-voluntarily](http://www.gov.uk/return-home-voluntarily)
- 2) You can make your own travel arrangements. You will need to contact the Home Office before booking your travel, in order to make arrangements to collect your passport, travel and any related documentation prior to departure.

## 4B.10 What is AVR?

The Assisted Voluntary Returns (AVR) scheme is run by the Home Office. It can help you to return to your country of origin or to another country if you can prove you have the right to live there. For more information please visit:

[www.gov.uk/return-home-voluntarily](http://www.gov.uk/return-home-voluntarily)  
Voluntary Departures Team: 0300 004 0202

## 4B.11 What if there are children in my household?

If you are part of a family you are still liable to be removed. The Home Office will work with you and your family to discuss your options. They will look into the following options:

### **Assisted Voluntary Return**

For more information please visit:

[www.gov.uk/return-home-voluntarily](http://www.gov.uk/return-home-voluntarily)  
Voluntary Departures Team: 0300 004 0202

### **Required Return**

If you choose not to leave the UK voluntarily the Home Office will write to you to tell you that they require you to return. You will receive a two week notice of return and must fully prepare yourself and your children for return. It is likely that you will have the

option of taking a self check in and managing your own return.

Ensured Return Ensured Return is used when other options to return you to your home country have failed. Your case will be reviewed by an independent families return panel if you reach the ensured return stage. The panel will advise the most suitable method of return based upon safeguarding any children.

The Home Office has a family pre-departure accommodation centre. This is called Cedars and is near to Gatwick Airport. The family returns panel may decide that all other return options have been exhausted or are unsuitable.

## **4B.12 What happens if I don't want to return?**

If you choose not to use any service to assist with your return or do not make the effort to leave the UK, then the Home Office will take enforcement action to remove you. This means forcing you to return to your country of origin.

If the Home Office is considering removing you from the UK, your case will be transferred from the Home Office's UK Visa and Immigration Department to Home Office Immigration Enforcement.

Immigration Enforcement will give you written notice if the intention is to remove you from the UK, and notify you of any right of appeal against this decision. They have to follow a legal process that enables them to force you to leave the UK if you are Appeal Rights Exhausted and you have no further legal basis to be here. This may involve arrest and detention in a secure centre until you leave the country. Alternatively Immigration Enforcement may simply ask you to report to a designated place at a certain time whilst your removal is arranged. The Home Office may detain you without warning while it arranges your removal.

## **4B.13 Circumstances for detention**

The Home Office will look at the following factors in deciding if it should place you in detention. These are:

- Your previous immigration history
- Your country or origin
- Whether you have complied with your temporary admission (have you always reported in accordance with your IS96?)
- The likelihood of your absconding.



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## 4B.14 What if I still think it is not safe to return?

If your asylum case has been fully determined and you have been unsuccessful, it is important that you seek legal advice to see whether any further options are available to you and whether there are any further submissions that can be used in your case.

You should ask your legal representative about this. They must explain all further options to you when closing your case.

You may be able to submit a fresh claim for asylum to the Home Office. To do this you will need to have further evidence to submit to the Home Office. 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, creates a realistic prospect of success, notwithstanding its rejection.

## 4B.15 What will happen to my support if I become a failed asylum seeker?

If you are fully refused asylum, with no dependants under 18 and become appeal rights exhausted or you choose to withdraw your asylum application, you will lose your entitlement to support 21 days after you claim has been fully determined. You will receive a letter from the Home Office and will be given 7 days notice to leave your property if you are in Home Office accommodation.

If you have dependants in your household who are currently under 18, your Home Office support will continue until you and your family either return voluntarily return, or are removed, or until your dependants turn 18.

## 4B.16 Section 4 Support

Short-term support if your application was unsuccessful: If your support is terminated you may be eligible for short term support while you are preparing to return to your country. This is known as 'section 4 support' because it is given under the terms of section 4 of the Immigration and Asylum Act 1999. Section 4 support is for failed asylum seekers. Section 4 support is different from the support you may have been receiving during your asylum claim (Section 95 support) because of the following reasons:

- There is no cash entitlement. Support will be given in the form of a payment card. This is known as an 'Azure' card. This can only be used in certain shops

in the UK - Tesco's, Sainsbury's, The Co-Operative, Morrison's, Peacocks, Early Learning Centre, Asda, Mothercare, The Red Cross and The Salvation Army.

You must meet strict requirements in order to qualify for section 4 support. You must be destitute and satisfy one of the following requirements:

- 1) You are taking all reasonable steps to leave the UK or you are placing yourself in a position where you can do so; or
- 2) You or a family member cannot leave the UK because of a physical impediment to travel or for some other medical reason; or
- 3) You cannot leave the UK because, in the Secretary of State's opinion, no viable route of return is currently available; or
- 4) You have applied for a judicial review of your asylum application and have been given permission to proceed with it; or
- 5) Accommodation is necessary to prevent a breach of your rights within the meaning of the Human Rights Act 1998.

### **1. All Reasonable Steps**

To qualify for section 4 support under this requirement, you must show that you are taking all reasonable steps to leave the UK. The Home Office can refuse support if it believes that you are not following all options available to you. Whether or not a particular step is "reasonable" will depend on your circumstances. Usually, you will be expected to apply for voluntary return with the Home Office programme, make contact with your country's embassy to arrange emergency passports (if needed).

**Important note: If you believe that you may have grounds to submit a fresh claim it is important that you seek legal advice. Any application for voluntary return even if withdrawn may affect your fresh claim.**

### **2. Physical Impediment to Travel**

To qualify under this condition you must be unable to travel due to a medical condition. You will need to prove to the Home Office that you or a family member is unable to travel due to a physical or mental health problem. It is not enough to show that you are receiving medical treatment in the UK or that it is your doctor's opinion that it would be preferable that you did not travel. You must have a medical condition that makes you or your family unable to travel.

#### **Evidence required to prove 'physical impediment to travel':**

- Written documentation should be obtained from a medical practitioner specifically stating that you are unable to travel, the reasons for this and the

length of time that you are likely to be not fit to travel.

- You will need to get your medical practitioner to complete a 'Section 4 Medical Declaration' form, this is available on the Gov.uk website or contact Asylum Help on 0808 8000 630 who can send you a copy of the form.

### **Pregnancy and physical impediment to travel**

The Home Office policy is that women in the late stages of pregnancy (around six weeks before their expected due date, or earlier if there have been complications), or those with a baby under six weeks old, are automatically accepted as being unable to travel. You will need to submit proof of pregnancy in the form of a maternity certificate, birth certificate and a medical declaration if you are applying prior to six weeks before your expected due date.

### **3. No Viable Route of Return**

This requirement applies to people who are unable to leave the UK because in the opinion of the Secretary of State there is currently no viable route of return available.

### **4. Application for Judicial Review**

If your legal representative has submitted a judicial review regarding a decision on your asylum claim, they must first apply to the High Court for permission to proceed. Once the High Court has granted you permission, you will be eligible for section 4 support under this requirement. If you live in Scotland and have submitted the application to the Court of Sessions then you can apply under this section.

#### **Evidence required to prove 'application for judicial review':**

A letter from the High Court confirming permission to proceed/Confirmation that the application has been submitted (Scotland).

### **5. Human Rights Breach**

The Home Office cannot withhold support from you if by doing so, it would cause a breach of your Human Rights.

Although destitution has in some circumstances been deemed as a breach to a persons Human Rights, a failed asylum seeker who is deemed not to be making every effort to leave the UK is not entitled to support. This is because the courts have ruled that they are destitute by choice and therefore have no entitlement to support. The Home Office must provide support if your rights under the European Convention of Human Rights (ECHR) would be breached if it withheld support.

For example, if you have submitted a fresh claim for asylum, which remains outstanding, you could apply under this section. This would also be the case if a judicial review had been submitted but permission to proceed has not yet been granted. You may also be able to apply under this section if your family would become separated by

denying some members support.

A legal representative should be able to assist if you have new evidence available as to why you can not return home.

If you have a non-protection based application outstanding with the Home Office then you will not have an entitlement to support. This will not be deemed as a barrier to leave the UK to avoid the effects of destitution.

**Evidence required to prove 'human rights breach' includes:**

- Confirmation that a fresh claim has been submitted
- Birth Certificates, proof of family life
- Copy of submissions to the High Court

If you require more advice about Section 4 or assistance with finding a legal representative please contact Asylum Help on: 0808 8000 630

## **4B.17 What do I need to do to prove I am destitute?**

The Home Office will consider you to be destitute if you do not have either access to 'adequate accommodation' or have no way of meeting your 'essential living needs' (such as access to food, light and warmth) now or within the next 14 days.

You need to show that you are currently or are at risk of becoming 'street homeless'. It is enough to provide evidence that you will not have adequate accommodation or that you will not be able to meet your basic living needs within the next 14 days.

**Destitution checks will still be made which may result in further information requests from applicant.**

**Evidence required to prove destitution:**

- You will need to provide a list of addresses at which you have been staying since support ended, plus details of how long you stayed at each address, and why this support can no longer continue;
- Evidence about your most recent accommodation, where this was and why this accommodation is no longer available to you (letter from a friend/ relative - this needs to cover the last six months);
- Eviction notice, etc;
- Evidence of any charitable support you have received or attempts to seek charitable support;

- Copy of any bank statements (if any) for the last 6 months;
- If you are a lone parent you may be asked for evidence of attempts to seek maintenance from the father of the child;
- If you have previously had permission to work or have worked illegally, you may be asked for your latest P60 and/or wage slips, plus evidence that you are no longer working or entitled to work;
- If you are living in private rented accommodation, the rental agreement and any requests to leave the property;
- If you have previously claimed mainstream benefits, evidence that you are no longer entitled (e.g. letter from the DWP);
- It may also be useful to prepare a personal statement about how you have been surviving since your previous support stopped. These can be important for people who are having difficulties obtaining the required information.

## 4B.18 How do I apply for Section 4 Support?

If you need further information and advice on Section 4 Support (including eligibility) then you need to contact Asylum Help on 0808 8000 630 or visit [www.asylumhelpuk.org](http://www.asylumhelpuk.org).

If you have already decided to apply for Section 4 support and need assistance with the application form, you need to contact Asylum Support Application UK on 0808 8000 631 or visit [www.asylumhelpuk.org](http://www.asylumhelpuk.org) You need to ensure that you have all required evidence to apply for support.

**Important Information: You will not be entitled to support until the Home Office has processed your application. Asylum Help can assist with your support application but you will need to provide evidence and confirmation of how you meet the above criteria.**

**Asylum Help will go through your individual circumstances and confirm the evidence that the Home Office will require to assess your eligibility for support. Once received we can assist your application for support. If the Home Office do not feel you have shown that you are destitute or you do not meet the criteria they will either refuse your application or request further documentation.**

**If you fail to provide evidence as requested by the Home Office your application may be closed with no further action taken.**

## 4B.19 Section 4 Support Appeal

If your application for Section 4 is refused then there is an entitlement to appeal to the First-tier Tribunal (Asylum Support). The Home Office will send a letter refusing support. This letter will stipulate the ground/reasons for refusal. Appeals need to be submitted within three working days from the date of decision. You need to contact the Asylum Advice UK line as soon as possible for assistance with an appeal. Asylum Help will confirm if you have grounds to appeal and will go through your options with you. For more information, see Asylum Support Appeals Project website: [www.asaproject.org](http://www.asaproject.org)

## 4B.20 Changes of Circumstances

It is important to keep the Home Office, the courts and your legal representative (if you have one) up to date with your circumstances. This may affect your case. If you fail to notify them of a change of address you may miss important court letters. If you have a baby, and you fail to notify, then the baby will not be added to your asylum application. The Home Office will need to be notified of any of the following:

- you change your name;
- any of your dependants reach their 18th birthday;
- you move to a different address;
- you get married or divorced, or separate from your partner;
- you are hospitalised;
- you, or your partner, become pregnant or have a baby;
- any of your children leave school, or leave home;
- any other family members join you in the UK, or leave you;
- anyone else joins you in your accommodation or leaves you;
- you are put in prison;
- you receive or gain access to money that you had not previously told us about;
- you receive or gain access to money after selling something; or
- you no longer want us to provide accommodation for you.

The above may have implications for your asylum support or will need to be told to the court/your legal advisor. Asylum Help can assist you to advise the Home Office asylum support section of a change to the above circumstances. However, it is important that you also notify the immigration side of the Home Office/Courts of these changes. Your legal representative should be able to assist you with this.

**For further information regarding asylum support matters or obtaining legal advice please contact Asylum Help.**

**[www.asylumhelpuk.org](http://www.asylumhelpuk.org)**

**Asylum Advice UK 0808 8000 630**

**Asylum Support Application UK 0808 8000 631**