

Fresh Asylum Claims and Further Representations

Courtesy of Immigration Law Practitioners' Association (ILPA)



The distinction between fresh claims and further representations is very important.

A fresh claim is where someone who has previously made an asylum claim, which has been finally refused, makes a new claim that they should be granted asylum.

Immigration Rules: Paragraph 353 of the Immigration Rules states:

“...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...”

Further representations (or further submissions) are no more than information that is sent to the Home Office after asylum has been refused. These may or may not include new information. These may or may not relate to an identified asylum or human rights claim. Sometimes, the representations may do no more than restate any compassionate circumstances and ask the Home Office to exercise their general discretion to grant some form of status.

A fresh claim, however, must contain new information. That is information, which no decision-maker (whether the Home Office or an immigration judge) has yet considered. The effect of the new information must be that there is a real chance the claim will be successful.

Benefits of a fresh claim

If a fresh claim is made, this may enable a person to qualify again for welfare and housing support as an asylum-seeker. A person will usually have a new right of appeal against a refusal of a fresh claim. Also, a fresh claim may qualify for legal aid. In contrast, further representations will not usually lead to these benefits.

What counts as new information?

There is no limitation on what will count as new information - except that it must not have been considered before. New information might include:

- new information about the individual asylum-seeker - e.g. documents received from his or her home country, such as an arrest warrant
- new information related to the individual asylum-seeker - e.g. information from his or her home country of the arrest of a family member
- evidence of a change of circumstances in the asylum-seeker's home country
- a development in caselaw - e.g. a new judgment of the Court of Appeal or decision of the Asylum and Immigration Tribunal

These categories are not exhaustive. They merely indicate the range of information that may count as new. In particular, they show that new information may, but does not need to be, personal to the asylum-seeker.

A real chance of success

In addition to providing new information, a fresh claim must have a real chance of success. This means that the new information must be relevant. It must give reason to think that, despite previous decisions, the asylum-seeker is now at risk.

Necessary considerations before making a fresh claim

Firstly, it is vital to obtain the decisions made on the original (and any other) asylum claim. The evidence on which that claim was based is also needed. This information must be carefully considered to work out:

- what information has already been considered?
- what findings of fact have already been made?

Secondly, it is necessary to consider the new information. Having seen what information has already been considered, it is now possible to decide whether the information is indeed new. It will not be new unless it either provides evidence of some new fact or provides a new source of evidence for a fact that has previously been rejected.

Thirdly, it is necessary to consider whether any new information creates a real chance of success. This can only be done by considering the facts already decided. For instance, country information establishing that persons of a particular ethnic group are now at risk will not assist if it has already been decided that the asylum-seeker is not of that ethnic group - unless there is also new information giving reason to think that decision was wrong.

It will be necessary to consider why the new information has not been made available previously. Relevant questions will include:

- from where and from whom has the new information come?
- why has it been possible to obtain it now; and why was this not possible previously?

Credibility

Asylum claims are often refused because the asylum-seeker is said not to be credible (not truthful, or not reliable). If the asylum-seeker has been found to be not credible, this may affect how much weight will be given to any new information. This will depend on the source of the new information.

However, if the new information contains new and relevant evidence (not simply the asylum-seeker stating that something new has happened) it would usually justify a fresh claim - unless there were strong reasons to think the evidence was clearly unreliable.

Home Office policy on fresh claims can be found at: <http://bit.ly/rule353>

[Please note: NCADC does not provide 'Immigration Advice' as defined in section 82, Part V of the Immigration and Asylum Act 1999, such advice is subject to regulation by the Office of the Immigration Services Commissioner (OISC). Therefore the contents of this document should under no circumstances be seen as 'Immigration advice'.]