

How to Effectively Prepare Gender-based Violence and Asylum Claims

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We will look at...

- Understanding Gender-Based Violence (GBV) and the Definition of a Refugee
- The Standard of Proof in Asylum Claims
- Assessing Credibility
- Convention Reasons: Legal Framework, Case Law & Country Guidance
- Evaluating the Availability of State Protection
- The Principle of Internal Relocation
- Evidentiary Challenges and Best Practices
- Interactive Case Studies

We will end with a Questions & Answers session.

What do we mean by Gender-Based Violence?

Violence directed against a person because of that person's gender or violence that affects persons of a particular gender disproportionately.

Examples: sexual violence, forced marriage, FGM, domestic abuse, honour crimes, forced abortion, forced sterilisation, forced prostitution/trafficking/modern slavery

Definition of a Refugee

“For the purposes of this Convention, the term ‘refugee’ shall apply to any person who:

‘owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country [...]’

Art 1(A)(2), 1951 Refugee Convention

Breaking down the definition

1. Outside country of nationality
2. Well-founded fear
3. Persecution
- 4. Convention reason**
- 5. State protection**
- 6. Internal relocation**

Standard of Proof / Credibility

Standard of Proof

Asylum Policy Instruction: Assessing Credibility and Refugee Status Claims Before 28 June 2022 V10.0

- Low standard of reasonable degree of likelihood

Asylum Policy Instruction: Assessing Credibility and Refugee Status in Asylum Claims on or After 28 June 2022 V13.0

- Different standards of proof at different stages
- Move to balance of probabilities for first stage
- Second stage test remains reasonable degree of likelihood

Standard of Proof

Section 32 of the Nationality and Borders Act 2022

- (1) In deciding for the purposes of Article 1(A)(2) of the Refugee Convention whether an asylum seeker's fear of persecution is well-founded, the following approach is to be taken.
- (2) The decision-maker must first determine, on the balance of probabilities— (a) whether the asylum seeker has a characteristic which could cause them to fear persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion (or has such a characteristic attributed to them by an actor of persecution), and (b) whether the asylum seeker does in fact fear such persecution in their country of nationality (or in a case where they do not have a nationality, the country of their former habitual residence) as a result of that characteristic. (See also section 8 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (asylum claims etc: behaviour damaging to claimant's credibility).)
- (3) Subsection (4) applies if the decision-maker finds that— (a) the asylum seeker has a characteristic mentioned in subsection (2)(a) (or has such a characteristic attributed to them), and (b) the asylum seeker fears persecution as mentioned in subsection (2)(b).
- (4) The decision-maker must determine whether there is a reasonable likelihood that, if the asylum seeker were returned to their country of nationality (or in a case where they do not have a nationality, the country of their former habitual residence)— (a) they would be persecuted as a result of the characteristic mentioned in subsection (2)(a), and (b) they would not be protected as mentioned in section 34.
- (5) The determination under subsection (4) must also include a consideration of the matter mentioned in section 35 (internal relocation).

Standard of Proof

JCK (s.32 NABA 2022) [2024] UKUT 00100 (IAC)

- 1. Sections 31-36 of the Nationality and Borders Act 2022 apply in an appeal where the claim for international protection was made after 28 June 2022.
- 2. In an appeal to which s32 NABA 2022 applies, the proper approach is to address each of the questions posed by the section expressly and sequentially.
- 3. Question 1 is whether, on the balance of probabilities, the claimant has a characteristic which could cause them to fear for one of the five reasons set out in the Refugee Convention. In simple terms: is there a Convention reason?
- 4. Question 2 is whether, on the balance of probabilities, the claimant “does in fact fear” such persecution. This is the ‘subjective fear’ test.
- 5. Questions 3-5 are matters of objective evaluation and must each be determined on the lower standard of proof: ‘a reasonable degree of likelihood’. Is it reasonably likely that there is:
 - a risk of harm • an absence of state protection, and • no reasonable internal flight alternative

Credibility

Asylum interviews Version 28 June 2022

- P15 - Video Conferencing
- P18 – Non-attendance due to illness
- P21 – Requests for interpreters or interviewers
- P22 – Friends or companions
- P31-37 – Interview preparation and structure
- P38-40 – Investigating the asylum claim
- P41-45 – Interviewing technique
- P46-48 – Exploring immigration history
- P49-54 – Questions about the basis of claim
- P55-58 – Victims of torture and trauma; interviews with victims of torture or trauma, victims of gender based persecution, claimants with scars, victims of modern slavery, mental illness, threats of self harm and suicide
- P59-61 - Particular interview needs
- P62-63 – Concluding the interview

Credibility

Practice Direction First Tier and Upper Tribunal Child Vulnerable Adult and Sensitive Witnesses

- §1 – Defines child, vulnerable and sensitive witness
- §2 - A child, vulnerable adult or sensitive witness will only be required to attend as a witness and give evidence at a hearing where the Tribunal determines that the evidence is necessary to enable the fair hearing of the case and their welfare would not be prejudiced by doing so.
- §6 - The Tribunal must consider how to facilitate the giving of any evidence by a child, vulnerable adult or sensitive witness

Credibility

Joint Presidential Guidance Note No 2 of 2010 Child, Vulnerable Adult and Sensitive Appellant Guidance

- §§2-3 – Identifying vulnerability
- §§4-6 – Raising and resolving issues of vulnerability prior to the hearing
- §§7-10 – Substantive hearing
- §§11-15 - Determination
- §§16-18 – The need for guidance
- §§19-21 – Who the guidance applies to
- §§22-27 – Other sources of guidance

SB (vulnerable adult: credibility) Ghana [\[2019\] UKUT 00398 \(IAC\)](#)

Convention Reasons

Convention Reasons Post NABA 2022

Section 33 of the Nationality and Borders Act 2022

- (1) For the purposes of Article 1(A)(2) of the Refugee Convention— (a) the concept of race may include consideration of matters such as a person's colour, descent or membership of a particular ethnic group; (b) the concept of religion may include consideration of matters such as— (i) the holding of theistic, non-theistic or atheistic beliefs, (ii) the participation in formal worship in private or public, either alone or in community with others, or the abstention from such worship, (iii) other religious acts or expressions of view, or (iv) forms of personal or communal conduct based on or mandated by any religious belief; (c) the concept of nationality is not confined to citizenship (or lack of citizenship) but may include consideration of matters such as membership of a group determined by its cultural, ethnic or linguistic identity, common geographical or political origins or its relationship with the population of another State; (d) the concept of political opinion includes the holding of an opinion, thought or belief on a matter related to a potential actor of persecution and to its policies or methods, whether or not the person holding that opinion, thought or belief has acted upon it.
- (2) A group forms a particular social group for the purposes of Article 1(A)(2) of the Refugee Convention only if it meets both of the following conditions.
- (3) The first condition is that members of the group share— (a) an innate characteristic, (b) a common background that cannot be changed, or (c) a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it.
- (4) The second condition is that the group has a distinct identity in the relevant country because it is perceived as being different by the surrounding society.
- (5) A particular social group may include a group based on a common characteristic of sexual orientation, but for these purposes sexual orientation does not include acts that are criminal in any part of the United Kingdom.

Policy Guidance

- [Asylum Policy Instruction: Assessing Credibility and Refugee Status Claims Before 28 June 2022 V10.0](#)
- [Asylum Policy Instruction: Assessing Credibility and Refugee Status in Asylum Claims on or After 28 June 2022 V13.0](#)

Relevant Case Law / Country Guidance Decisions

- PS (Christianity - risk) Iran CG [2020] UKUT 00046 (IAC)
- Roba (OLF - MB confirmed) Ethiopia CG [2022] UKUT 00001 (IAC)
- ST (Ethnic Eritrean – nationality – return) Ethiopia CG (2011) UKUT 00252
- HB (Kurds) Iran CG [2018] UKUT 00430 (IAC)

Relevant Case Law / Country Guidance Decisions

- Islam v SSHD, Ex Parte Shah, R v. [1999] UKHL 20; [1999] 2 AC 629
- SSHD v. K, Fornah v. SSHD [2006] UKHL 46
- MD (Ivory Coast) v SSHD [2011] EWCA Civ 989
- VM (FGM-risks-Mungiki-Kikuyu/Gikuyu) Kenya CG [2008] UKAIT 00049
- SK (FGM - ethnic groups) Liberia CG [2007] UKAIT 00001
- KC (Gambia) v The SSHD [2018] EWCA Civ 2847

Relevant Case Law / Country Guidance Decisions

- TD and AD (Trafficked women) CG [2016] UKUT 92 (IAC)
- HD (Trafficked women) Nigeria CG [2016] UKUT 454 (IAC)
- BK (Risk – Adultery -PSG) India CG [2002] UKIAT 3387
- EH (blood feuds) Albania CG [2012] UKUT 00348
- EMAP (Gang violence – Convention Reason) El Salvador CG [2022] UKUT 00335 (IAC)

DH (Particular Social Group: Mental Health) Afghanistan [2020] UKUT 223 (IAC)

2. Depending on the facts, a ‘person living with disability or mental ill health’ may qualify as a member of a Particular Social Group (“PSG”) either as (i) sharing an innate characteristic or a common background that cannot be changed, or (ii) because they may be perceived as being different by the surrounding society and thus have a distinct identity in their country of origin.

3. A person unable to secure a firm diagnosis of the nature of their mental health issues is not denied the right to international protection just because a label cannot be given to his or her condition, especially in a case where there is a satisfactory explanation for why this is so (e.g. the symptoms are too severe for accurate diagnosis).

4. The assessment of whether a person living with disability or mental illness constitutes a member of a PSG is fact specific to be decided at the date of decision or hearing. The key issue is how an individual is viewed in the eyes of a potential persecutor making it possible that those suffering no, or a lesser degree of, disability or illness may also qualify as a PSG.

State protection

State protection

Section 34 of the Nationality and Borders Act 2022

- (1) For the purposes of Article 1(A)(2) of the Refugee Convention, protection from persecution can be provided by—
 - (a) the State, or
 - (b) any party or organisation, including any international organisation, controlling the State or a substantial part of the territory of the State.
- (2) An asylum seeker is to be taken to be able to avail themselves of protection from persecution if—
 - (a) the State, party or organisation mentioned in subsection (1) takes reasonable steps to prevent the persecution by operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution, and
 - (b) the asylum seeker is able to access the protection.

Pain points and relevant case law

- “reasonable steps” and “effective legal system”
- [Horvath \[2000\] UKHL 37](#)
 - States cannot protect everyone, everywhere, at all times
 - About “effective” system of protection
- R (Bagdanavicius) [2005] UKHL 38
 - The effectiveness of system to be judged by its systemic ability to deter and/or to prevent the form of persecution of which there is a risk, not just punishment of it after the event.
 - C may have a well- founded fear of persecution where state know or ought to know of their particular circumstances but not providing additional protection their particular circumstances reasonably require.

Guidance

“Women in particular may be subject to gender-related abuse resulting from social customs or conventions because there is no effective means of legal recourse to prevent, investigate or punish such acts. Such failure of state protection may include but are not limited to:

- legislation, for example marital rape exemptions in law
- lack of police response to pleas for assistance
- reluctance, refusal or failure to investigate, prosecute or punish individuals
- encouragement or toleration of particular social, religious, customary laws, practices and behavioural norms or an unwillingness or inability to take action against them

For example, the state may make illegal an act that can amount to persecution, such as female genital mutilation (FGM), but continue to condone, tolerate or ignore the practice or be unable to put an effective end to the custom because of its widespread cultural acceptance and reluctance of the local population to report incidents or support police investigations.

[Asylum Policy Instruction: Assessing Credibility and Refugee Status in Asylum Claims on or After 28 June 2022 V13.0](#)

Internal relocation

Internal relocation

Section 35 of the Nationality and Borders Act 2022

- (1) An asylum seeker is not to be taken to be a refugee for the purposes of Article 1(A)(2) of the Refugee Convention if—
 - (a) they would not have a well-founded fear of being persecuted in a part of their country of nationality (or in a case where they do not have a nationality, the country of their former habitual residence), and
 - (b) they can reasonably be expected to travel to and remain in that part of the country.
- (2) In considering whether an asylum seeker can reasonably be expected to travel to and remain in a part of a country, a decision-maker—
 - (a) must have regard to—
 - (i) the general circumstances prevailing in that part of the country, and
 - (ii) the personal circumstances of the asylum seeker;
 - (b) must disregard any technical obstacles relating to travel to that part of that country.

Pain points and relevant case law

- “reasonable steps” and “effective legal system”
- [Januzi v SSHD & Ors \[2006\] UKHL 5](#)
 - Is relocation unduly harsh, taking into account circumstances of the individual applicant
 - Reasonableness to be assessed as per UNHCR Guidelines on International Protection (July 2003) - respect for fundamental human rights, in particular non-derogable rights; economic survival including issues of access to land, resources protection, family links or a social safety net, trivial or cultural difficulties or conditions of severe hardship
- [AH \(Sudan\) & Ors \[2007\] UKHL 49](#)
 - Confirms need for holistic assessment

Guidance

- Need to take into account means and safety of travel, and communication, cultural traditions, religious beliefs and customs, ethnic or linguistic differences, health facilities, employment opportunities, supporting family or other ties, presence and ability of civil society to provide practical support to the claimant, claimant's physical and mental health, availability of family support

Guidance (cont)

- In some countries, financial, logistical, social, cultural and other factors may mean that women face particular difficulties moving around or relocating. This may be the case for divorced women, unmarried women, widows or single/lone parents, especially in countries where women are expected to have male protection. If women face discrimination in a possible place of relocation and are unable to work or obtain assistance from the authorities, it may be unreasonable to expect her to relocate. Where the fear is of members of a woman's family, relocation is clearly not appropriate if the situation she would be placed in is likely to leave her with no alternative but to seek her family's assistance and thus re-expose her to persecution or a real risk of serious harm. You must consider whether the claimant, if unaccompanied, would be able to safely access the proposed relocation area, obtain accommodation, and avail herself of the support that may be available there from civil society. Gender specific risks include the risk of being subjected to sexual violence.

Evidence

“Claims of this nature are often particularly difficult to substantiate for several reasons, for example the harm often takes place within the private sphere, it may not be unlawful or considered wrong in the claimant’s community or country of origin, or an inability to access police protection or medical treatment. These claimants are unlikely to be able to provide documentary evidence to support their claim. It is likely that greater reliance will therefore need to be placed on their oral testimony and consideration of benefit of the doubt. [...] The shame and trauma that a person has experienced as a result of gender-based harm may, however, result in their oral testimony being less than complete, coherent or consistent”.

[Asylum Policy Instruction: Assessing Credibility and Refugee Status in Asylum Claims on or After 28 June 2022 V13.0](#)

Evidence

- Witness statement -
 - What happened/may happen
 - Attempts to seek protection
 - Nature of persecutor and status in country of origin
 - Difficulties with internal relocation
- Evidence from other professionals (e.g. GBV organisations, doctors, Local Authority)
- Protection orders (e.g. FGM Protection Order or Forced Marriage Protection Order)
- Medical evidence (re-physical and mental health)
- Country of origin (CPINs, country expert reports)

CASE STUDY 1 – FACTS

Amina is a 26-year-old woman from a large city in Country X. She belongs to a conservative ethnic minority group. Aged 17, she refused an arranged marriage to a distant relative. Amina was then subjected to escalating threats and violence from her family and community. She was beaten by her brothers, and her uncle threatened to kill her for dishonouring the family.

Amina reported the violence to the local police, however the authorities dismissed her complaint, stating that it was a "family matter" and took no further action. Fearing for her safety, Amina fled to the capital city, where she lived in hiding for several months. She eventually fled to the UK and, five years after her arrival, claimed asylum.

Amina suffers from poor mental health, including symptoms of anxiety and depression, PTSD, and suicidal ideation.

CASE STUDY 1 – QUESTIONS

- 1) What issues could the Home Office raise in a refusal letter, and what steps may you want to take to proactively address them?
- 2) What evidence would you try collating to support Amina's asylum claim?

CASE STUDY 2 - FACTS

- A is a national of Albania. She comes from a strict Muslim family.
- Her brothers and father forced her into a marriage to a man who was 20 years older than her.
- During her marriage she was raped, subjected to violence. She was also made to do all the household work by her in laws. She was not permitted to work, go out alone or see friends. She wished to seek divorce but her family would not allow her to do so. She had two children from the marriage.
- One day she was beaten so badly she was hospitalised. Her husband told the hospital staff she was having an affair and her boyfriend did that to her. He issued divorce proceedings and took custody of her daughter and son.
- She later met a man in Albania who promised her a better life. She travelled to the UK with him and here she cooked and cleaned whilst he worked and went out with his friends. He was violent to her verbally and physically.
- She escaped and claimed asylum.
- She suffers with PTSD, depressive disorder and anxiety.

CASE STUDY 2 - DECISION

- The decision letter says that she was referred into the NRM after the asylum interview. The NRM have made a positive conclusive grounds trafficking decision and as such her trafficking will be considered there. This decision focussed on asylum and human rights grounds.
- She is accepted to be a victim of domestic violence in Albania and the UK.
- Victims of domestic violence do not form a particular social group in Albania – DM (Sufficiency of protection, PSG, Women, Domestic violence) [2004] UKIAT 59
- There is protection available for victims of domestic violence in Albania - <https://www.gov.uk/government/publications/albania-country-policy-and-information-notes/country-policy-and-information-note-domestic-abuse-and-violence-against-women-albania-december-2018-accessible>
- The people she fears would not pose a real risk to her. She can relocate.

CASE STUDY 2 – QUESTIONS

1. What would you say about the decision and the issue of convention reason?
2. How would you argue convention reason?
3. What arguments would you advance on state protection?
4. What would you say in respect of internal relocation?

Q&A