Home Office

Safety of Rwanda

Version 2.0

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About this guidance

This guidance explains how to consider claims made by persons subject to removal to the Republic of Rwanda (Rwanda) under the terms of the Migration and Economic Development Partnership (MEDP).

Contacts

If you have any questions about the guidance and your line manager or senior caseworker cannot help you or you think that the guidance has factual errors, then email the Third Country Asylum Processing Taskforce.

If you notice any formatting errors in this guidance (broken links, spelling mistakes and so on) or have any comments about the layout or navigability of the guidance then you can email the Guidance Rules and Forms team.

Publication

Below is information on when this version of the guidance was published:

- version **2.0**
- published for Home Office staff on **13 May 2024**

Changes from last version of this guidance

This version contains updates to accurately describe the effect of section 4(1) of the Safety of Rwanda (Asylum and Immigration) Act 2024, by making clear that compelling evidence should be considered by decision-makers in the context of human rights claims and inadmissibility decisions.

Related content
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Introduction

Audience and purpose of instruction

This guidance must be used to assist decision-makers in the Third Country Unit when considering claims made by persons who are being considered for safe third country inadmissibility action and removal to Rwanda under the terms of the Migration and Economic Development Partnership (MEDP).

All subsequent representations received on any such refused claims that have been refused where the appeal rights have either been certified or exhausted (or have lapsed) would be in the scope of the Further Submissions policy and must be considered accordingly. After the initial inadmissibility decision is made, decision making on any further submissions will be undertaken by the Detained Barrier Team and Operational Support and Certification Unit.

Further reading

This guidance must be read alongside the related lead instructions and resources, including but not limited to:

- Inadmissibility: safe third country cases
- Considering Human Rights Claims
- Medical claims under Articles 3 and 8 of the European Convention on Human Rights (ECHR)

You must also refer to the Treaty between the UK and Rwanda, which sets out the protections and treatment that relocated individuals will receive in Rwanda, and the relevant country information notes which contain detailed information about the asylum system, human rights and medical treatment in Rwanda:

- Country information note Rwanda: human rights
- Country information note Rwanda: asylum system
- Country information note Rwanda: medical
- Country information note Rwanda: Annex 1 (Government of Rwanda evidence)
- Country information note Rwanda: Annex 2 (UNHCR evidence)
- Country information note Rwanda: Annex 3 (other material)
- UK-Rwanda treaty: provision of an asylum partnership

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Background

Measures in the Nationality and Borders Act 2022 (NABA), the Illegal Migration Act 2023 (IMA) and the Safety of Rwanda (Asylum and Immigration) Act 2024 (Safety of Rwanda Act) are part of the Government's strategy to tackle illegal migration, in particular migration through unsafe and illegal routes, enabling the removal of persons to Rwanda.

On 15 November 2023, in the case of AAA (Syria) & ors, R (on the application of) v Secretary of State for the Home Department [2023] UKSC 42, the Supreme Court found that removal of asylum seekers to Rwanda was, based on the evidence submitted up until Summer 2022, unlawful.

However, the Court recognised that changes could be made in the future to address its finding and the Government has since taken steps to further increase the protections offered to asylum seekers relocated to Rwanda.

This has included:

- building on the existing safety assurances from the Government of Rwanda
- ratification of a legally binding treaty with Rwanda which includes significant new protections in response to the Supreme Court's conclusions
- the Safety of Rwanda Act

The Safety of Rwanda Act confirms that Rwanda is a safe third country for the purposes of immigration decisions relating to the removal of individuals to Rwanda, save in respect of certain individuals where there is compelling evidence to the contrary relating specifically to their particular individual circumstances.

Once in our custody for the purposes of removal to Rwanda, any requests made by individuals to voluntarily return to their country of origin will not be accepted.

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Safety of Rwanda Act

General principles when considering claims

The Safety of Rwanda Act requires certain general principles to be applied when considering a claim from a person subject to removal to Rwanda. This includes requirements that:

- you must conclusively treat Rwanda as a safe country (section 2(1))
- the requirement to treat Rwanda as a safe country does not prevent you from considering claims that Rwanda is unsafe for the claimant in question based on their particular individual circumstances - such a claim must be based on compelling evidence (section 4(1))
- you must not consider whether Rwanda will or may remove or send the person concerned to another State in contravention of its international obligations (section 4(2))

A “safe country” is defined in section 1(5) as a place to which a person may be removed in compliance with all of the UK's international obligations that are relevant to the treatment of a person removed there.

This includes a country which will comply with its obligations under international law by:

- not removing a person or sending them to another country
- ensuring a person who is seeking asylum or who has had an asylum determination will have their claim determined and be treated in accordance with those obligations

For the purposes of the Safety of Rwanda Act, “International law” is defined in section 1(6) as including:

- the Human Rights Convention (being the European Convention on Human Rights (ECHR))
- the Refugee Convention
- the International Covenant on Civil and Political Rights of 1966
- the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984
- the Council of Europe Convention on Action against Trafficking in Human Beings done at Warsaw on 16 May 2005
- customary international law
- any other international law, or convention or rule of international law, whatsoever, including any order, judgment, decision or measure of the European Court of Human Rights

Assessing claims

Section 4(1) of the Safety of Rwanda Act provides that section 2(1), the requirement to treat Rwanda as a safe country, does not prevent decision-makers from considering whether Rwanda is safe for the claimant in question in situations where compelling evidence exists specifically related to the claimant's particular individual circumstances (rather than on the grounds that Rwanda is not a safe country in general).

You must therefore consider claims that Rwanda is not a safe country for the claimant in question based on their particular individual circumstances. There are two stages to assessing whether a claim meets the requirements of section 4(1).

Both parts of the test must be met before you can determine that Rwanda is not safe for the claimant in question.

Stage 1: Has the claimant established the facts of their claim through compelling evidence?

In considering such claims, you must first consider whether the claimant has established the facts of their claim through compelling evidence. See the section on Compelling evidence for guidance on how this must be considered.

Stage 2: Has the claimant established by virtue of the facts of their claim that there is compelling evidence that Rwanda is not safe for them?

You must consider whether the claimant has established, by compelling evidence, that as a result of their particular individual circumstances, Rwanda would not be a safe country for them.

For example, has the claimant established, by compelling evidence, that in light of their medical condition, Rwanda would not be a safe country for them, notwithstanding the protections set out in the Treaty and supporting evidence in relation to available treatment in Rwanda.

Compelling evidence

This section explains the meaning of 'compelling evidence' for the purposes of considering claims that Rwanda is not a safe country for the claimant in question, based on their particular individual circumstances.

Any person under consideration for relocation to Rwanda in the context of the safe third country inadmissibility policy will be issued with a Notice of Intent (NOI) to inform them that they are in scope for removal to Rwanda. An NOI will invite representations as to why inadmissibility action is not appropriate and anything relevant to that person as regards the safety of Rwanda. See Inadmissibility: safe third country cases for guidance on issuing an NOI.

The onus is on the person making the claim (the claimant) to substantiate their claim.

When assessing whether evidence is compelling you must be satisfied that it is substantial, reliable and supports the claim being made. For example, has the claimant provided a credible report from a suitably qualified independent expert, based on an adequate assessment? Is the history given to the expert consistent with the history given by the claimant elsewhere and, if it is not, is there a reasonable explanation for this? Are the conclusions in the report adequately reasoned? Is there any evidence, including other medical evidence, which undermines the conclusions in the report?

The type of evidence required to meet the threshold of compelling evidence will depend on all the circumstances of the case. For example, the claimant's unsupported account may be sufficient to amount to compelling evidence of historic sexual abuse if that account was clear, detailed and consistent given that it may be the only evidence available. Where evidence cannot be objectively verified, you must assess whether the evidence is sufficiently reliable to be considered compelling. By contrast, where the assertion is of a type for which strong, objective evidence ought to be available, such as the existence of a medical condition or a history of engagement in political activism, the threshold is unlikely to be met in the absence of strong, objective evidence in support of the claimant's own account.

Where you consider a document is relevant to the claim, you must also be satisfied with the veracity of the document. If the document has been issued by a non-UK authority, you can undertake veracity checks by checking addresses listed in the document, checking the signatories to the document, or checking available objective information that confirms whether such documents are produced within that country. Checks may also be conducted to establish the veracity of a document issued in the UK. If appropriate, you may refer to guidance on assessing the credibility of overseas documents in accordance with the Tanveer Ahmed principles.

You must consider whether evidence provided is consistent with other evidence and background information. The evidence must be considered in the round. Evidence cannot be considered compelling where it is inconsistent with objectively verifiable information.

Where there is missing information or evidence, or inconsistencies in the evidence provided, you must consider how this impacts the claim and whether it makes a material difference to the claim.

The absence of documentary evidence does not however necessarily mean a claim is bound to fail. However, you must be satisfied that the person's account as set out in the claim is reliable and, where necessary, can be objectively verified.

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Third country inadmissibility cases

You must refer to Inadmissibility: safe third country cases which outlines the process under which asylum claims may be treated as inadmissible on safe third country grounds, and the processes for taking such action, including decision making.

In broad terms, asylum claims may be declared inadmissible and not substantively considered in the UK, if the claimant was previously present in or had another connection to a safe third country, where they claimed protection, or could reasonably be expected to have done so, provided there is a reasonable prospect of removing them in a reasonable time to a safe third country.

Safety in the country of removal

This section explains how you must consider safety in the country of removal and certification when making third country inadmissibility decisions where the proposed country of removal is Rwanda.

In making third country inadmissibility decisions, you must consider the safety of the proposed country of removal.

You must refer to Inadmissibility: safe third country cases to determine the relevant decision-making framework.

Depending on which decision-making framework applies, paragraph 345B of the archived Immigration Rules and section 80B(4) of the Nationality, Immigration and Asylum Act 2002 (the 2002 Act) respectively set out the criteria that must be met for a country to be regarded as a safe third country for inadmissibility, which is also relevant to some of the considerations around the safety of removal to the third country.

Paragraph 345B of the Immigration Rules defines a country as a safe third country for a particular applicant, if:

- the applicant's life and liberty will not be threatened on account of race, religion, nationality, membership of a particular social group or political opinion in that country
- the principle of non-refoulement will be respected in that country in accordance with the Refugee Convention
- the prohibition of removal, in violation of the right to freedom from torture and cruel, inhuman or degrading treatment as laid down in international law, is respected in that country
- the possibility exists to request refugee status and, if found to be a refugee, to receive protection in accordance with the Refugee Convention in that country

Section 80B(4) of the 2002 Act defines a third country as being safe for a claimant if:

- the claimant's life and liberty are not threatened in that State by reason of their race, religion, nationality, membership of a particular social group or political opinion
- the State is one from which a person will not be sent to another State, either:
  - otherwise than in accordance with the Refugee Convention
  - in contravention of their rights under Article 3 of the Human Rights Convention (freedom from torture or inhuman or degrading treatment)
- a person may apply to be recognised as a refugee and (if so recognised) receive protection in accordance with the Refugee Convention, in that State

Section 2(1) of the Safety of Rwanda Act requires decision-makers to conclusively treat Rwanda as a safe country. But this requirement does not prevent you from considering claims that Rwanda is unsafe for the claimant in question based on their particular individual circumstances - such a claim must be based on compelling evidence.

You must **not** consider any claim or representations made on the grounds that Rwanda will or may remove or send the person in question to another State in contravention of any of its international obligations (including in particular its obligations under the Refugee Convention).

This means that in considering removal to Rwanda, in light of the Safety of Rwanda Act:

You must conclude in your decision that both of the following apply:

- the principle of non-refoulement will be respected in Rwanda in accordance with the Refugee Convention - this means a person will not be sent from Rwanda to another State in contravention of the Refugee Convention
- the prohibition of removal in violation of the right to freedom from torture and cruel, inhuman or degrading treatment as laid down in international law, is respected in Rwanda - this means a person will not be sent from Rwanda to another State in contravention of their rights under Article 3 of the European Convention in Human Rights (ECHR)

and

You must also conclude in your decision that both of the following apply, unless you decide that they do not apply to the person in question, based on compelling evidence relating specifically to the person's particular individual circumstances (rather than on the grounds that Rwanda is not a safe country in general):

- the claimant's life and liberty will not be threatened in Rwanda by reason of their race, religion, nationality, membership of a particular social group or political opinion
- the possibility exists to request refugee status in Rwanda and, if so recognised, receive protection in accordance with the Refugee Convention

Therefore, when considering removal to Rwanda, you must treat all the conditions in paragraph 345B of the Immigration Rules or in section 80B(4) of the 2002 Act

(respectively) as being met, unless (in relation to those conditions which do not relate to the possibility of removal from Rwanda to another state) you decide on the basis of compelling evidence relating specifically to the person's particular individual circumstances (rather than on the grounds that Rwanda is not a safe country in general) that one of those conditions is not met for the person in question.

You must also consider whether there is compelling evidence that, as a result of a claimant's particular individual circumstances, there are substantial grounds for believing that the claimant would face a real risk of a breach to their ECHR rights because Rwanda is not safe for them. See the section on Compelling evidence and Human rights claims for guidance on how this must be considered.

Removal certification

You must refer to Inadmissibility: safe third country cases when considering certification.

You must consider whether to certify your removal decision in line with paragraph 17 of Part 5 of Schedule 3 to the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (the 2004 Act).

Under paragraph 17 of Part 5, a certificate may be applied to a person who has made a protection claim if it certifies that:

- the person will be removed to a country where they are not a national or citizen
- the country is assessed to be one where the person's life and liberty are not threatened by reason of their race, religion, nationality, membership of a particular social group or political opinion
- the person will not be refouled from the country to which they will be removed in contravention of their Refugee Convention rights

The effect of the Safety of Rwanda Act is that you must conclude in your decision that Rwanda is both:

- a country where the person's life and liberty are not threatened by reason of their race, religion, nationality, membership of a particular social group or political opinion (unless you decide that this does not apply in the case of the person in question, based on compelling evidence relating specifically to that person's particular individual circumstances (rather than on the grounds that Rwanda is not a safe country in general))
- a place from where they would not be refouled in contravention of their Refugee Convention rights

The effect of this certificate is that a person may not appeal in reliance on an asylum claim which asserts that to remove the person to Rwanda would breach the UK's obligations under the Refugee Convention.

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Human rights claims

This section explains how you must consider human rights claims in relation to removal to Rwanda. This requires you to consider whether the claimant's rights under the European Convention on Human Rights (ECHR) would be breached on removal to Rwanda.

Under section 4(1) of the Safety of Rwanda Act, the requirement to treat Rwanda as a safe country does not prevent you from considering claims that Rwanda is unsafe for the claimant in question in situations where compelling evidence exists specifically related to the claimant's particular individual circumstances.

A person who is subject to inadmissibility action may raise representations which can be considered a human rights claim on protection or non-protection grounds, including under Article 3 ECHR relating to protection, health or destitution risk in Rwanda.

If a person claims or makes representations that their rights under the ECHR would be contravened if removed to Rwanda, you must carefully consider those claims in light of the Safety of Rwanda Act, which limits the grounds upon which human rights claims can be brought.

You must not consider claims on the basis that Rwanda will or may remove or send the person in question to an unsafe state in breach of their ECHR rights, or consider claims that Rwanda is generally unsafe.

In assessing human rights claims which allege that Rwanda is not a safe country for the claimant, you must consider whether there is compelling evidence establishing substantial grounds for believing that the claimant would face a real risk of a breach to their rights under the ECHR on the basis of their individual claims, following the 2 stage test set out in Assessing claims:

- stage 1: Has the claimant established the facts of their claim through compelling evidence?
- stage 2: Has the claimant established, by compelling evidence, substantial grounds for believing that there is a real risk that removal to Rwanda would be in contravention of their ECHR rights?

In considering human rights claims, you must have regard to all available and relevant evidence and guidance, as well as the Treaty between the UK and Rwanda, and the Rwanda Country Information Notes.

If you conclude that there is compelling evidence establishing substantial grounds for believing that there is a real risk that removal to Rwanda would lead to the claimant's ECHR rights being contravened on the grounds that Rwanda is not a safe country for the individual claimant, it will not be appropriate to consider removal to Rwanda. In such circumstances, it will be appropriate to consider removal to any further safe third countries which may have been identified, or to discontinue inadmissibility

action and refer the case to the National Asylum Allocation Unit to allocate to a casework team.

Medical claims

You must refer to Medical claims under Articles 3 and 8 of the European Convention on Human Rights (ECHR) when considering claims that removal to Rwanda would contravene the claimant's ECHR rights on medical grounds.

If a claimant claims to have a physical or mental health condition, first you must consider whether there is compelling evidence to establish that the claimant does have such a condition which might potentially be exacerbated by removal to Rwanda. See Assessing claims and Compelling evidence. The compelling evidence test will not be met simply by the claimant asserting that they have a particular condition, you would expect them to provide medical evidence to support their claim.

Medical evidence can emanate from a range of sources ranging from appointment slips to medico-legal reports (MLRs). Printouts of medical records or appointment slips may be sufficient to establish the existence of a condition. Medical evidence should be printed on letter-headed paper, with a verifiable postal address, telephone number and email of the relevant medical practice or hospital providing the evidence. Medical reports should include the details of the person collating the report and be signed and dated.

You must be confident that the evidence submitted in support of a claim meets the threshold of being compelling evidence. In the case of a medical report, you must give due consideration to the clinician and the consistency between clinical findings and the account of serious harm claimed the person would face if removed from the UK. Generally, a properly constituted medical report should be regarded as compelling evidence. However, you must consider whether the conclusions in the report are adequately reasoned. For example, is there any other evidence which undermines the conclusions reached in the report?

Second, you must consider whether the claim would meet the test as set out in AM (Zimbabwe) v SSHD [2020] UKSC 17, which affirmed the Article 3 medical threshold as that held in Paposhvili v Belgium [2017] Imm AR 867. This test is set out and explained in detail in the guidance - Medical claims under Articles 3 and 8 of the European Convention on Human Rights (ECHR).

This means you must consider whether, on the basis of compelling evidence, there are substantial grounds for believing that removal to Rwanda would give rise to a real risk that the claimant would face:

- a serious, rapid and irreversible decline in their health leading to intense suffering
- significant reduction in life expectancy

due to the absence of or inadequate treatment for that condition in Rwanda.

You must have regard to all available and relevant evidence and guidance as well as the Treaty between the UK and Rwanda and the Rwanda Country Information Notes.

If you conclude that there are substantial grounds for believing that the claimant would face a real risk of being exposed to a serious, rapid and irreversible decline in their state of health resulting in intense suffering, or a significant reduction in life expectancy as a result of the absence of appropriate medical treatment or lack of access to such treatment in Rwanda, it will not be appropriate to consider removal to Rwanda.

In such circumstances, it will be appropriate to consider removal to any further safe third countries which may have been identified, or to discontinue inadmissibility action and refer the case to the National Asylum Allocation Unit to allocate to a casework team.

Suicide and self-harm

If a claimant claims to be at risk of suicide or self-harm, first you must consider whether there is compelling evidence to establish that the claimant does have a condition which might potentially give rise to the risk of suicide or self-harm as a result of removal to Rwanda. See Assessing claims, Compelling evidence and Medical claims.

Second, in line with the test in AM (Zimbabwe), you must consider whether, on the basis of compelling evidence, there are substantial grounds for believing that there is a real risk that the claimant would face:

- a serious, rapid and irreversible decline in their health leading to intense suffering
- significant reduction in life expectancy

as a result of suicide or self-harm.

If a claimant claims their removal will give rise to a real risk of suicide or self-harm, the principles in J v SSHD [2005] EWCA Civ 629 will apply. In that case, the Court confirmed that an Article 3 claim can in principle succeed in a suicide case. The case also emphasised the importance of identifying the facilities that the removing and receiving states have to reduce the risk of suicide. The Court divided the process of removal into 3 stages:

- whilst in the UK on learning that removal will take place
- in transit
- on arrival in the destination country

Therefore, you must consider whether there are substantial grounds for believing that there is a real risk of self-harm or suicide at each of the 3 stages.

It will almost always be the case that the risk of a claimant's suicide on learning that removal will take place and during transit to the receiving state can be managed by UK medical authorities, together with the support structure that the claimant has in

place in the UK. This was restated in Tozlukaya v SSHD [2006] EWCA Civ 379. When considering whether there is a real risk of suicide or self-harm whilst in the UK or in transit, you must have regard to guidance on Adults at risk in immigration detention and Management of adults at risk in immigration detention.

In assessing whether the claimant would face a real risk of suicide or self-harm in Rwanda, you must consider whether the fears expressed by the claimant as to the circumstances in Rwanda upon which the risk of suicide is said to be based are objectively well founded; and whether Rwanda has effective mechanisms to reduce the risk of suicide. Providing medical care to reduce the risk of suicide is available and accessible to the claimant in the receiving state, this will generally be deemed sufficient.

You must have regard to the Treaty between the UK and Rwanda, which provides that the UK may provide details of any health conditions it is necessary for Rwanda to know about before receiving the relocated individual. Each relocated individual will be offered an initial medical assessment as soon as possible after arrival and that they shall thereafter have access, free of charge, to quality preventative and curative primary and secondary healthcare services that are at least of the standard available to Rwandan nationals.

You must also have regard to the Rwanda Country Information Notes, which contain detailed information about human rights and medical treatment in Rwanda, in addition to Annex 1 (Government of Rwanda evidence), which contains relevant Standard Operating Procedures for reception and accommodation arrangements, and identifying and safeguarding vulnerable individuals.

When considering whether there are substantial grounds for believing there is a real risk, you must have regard to the 6 point test as set out in J v SSHD [2005] EWCA Civ 629 (as amended by later case law):

1. There must be an assessment of the severity of the treatment it is claimed would be suffered. There must be a minimum level of severity and the severity will depend on all circumstances of the case. The 'ill-treatment' must 'necessarily be serious' (paragraph 26).

2. There must be a causal link between the act of removal and the claim of inhumane treatment which would be suffered (paragraph 27). The claimant must provide medical evidence. Anxiety or depression, for example, do not necessarily mean suicidal. The claimant must show increased risk of suicide abroad, if already at risk of suicide in the UK.

3. For claims that the suicide or self-harm will occur abroad, the threshold is particularly high, and it is even higher when the alleged inhumane treatment the claimant will suffer is not the direct or indirect responsibility of the receiving state's authorities but results from a naturally occurring illness, physical or mental (paragraph 28).

4. An Article 3 claim in a suicide case can succeed in principle (paragraph 29). This reflects the high threshold but that a claim of this kind could succeed in principle.

5. It is very important to establish if the fear on return is objectively well founded. If not, it will weigh against the real risk (paragraph 30). However, this is not necessarily determinative, especially if the subjective, but unfounded fear, stems from past mistreatment by the receiving state and there are no family members, or other support in the receiving state to help the person overcome that fear (Y and Z v Secretary of State for the Home Department [2009] EWCA Civ 362).

6. Effective mechanisms to reduce the risk of the removing and or receiving states are also very important in evaluating real risk (paragraph 31). It is now clear, following AM (Zimbabwe), that such mechanisms must be both available and accessible to the claimant.

If you conclude that there are substantial grounds for believing that the claimant would face a real risk of being exposed to a serious, rapid and irreversible decline in their state of health resulting in intense suffering, or a significant reduction in life expectancy as a result of suicide or self-harm at any of the three stages, it will not be appropriate to consider removal to Rwanda.

In such circumstances, it will be appropriate to consider removal to any further safe third countries which may have been identified, or to discontinue inadmissibility action and refer the case to the National Asylum Allocation Unit to allocate to a casework team.

Article 8 claims

Caseworkers must refer to Family life (as a partner or parent), private life and exceptional circumstances for guidance on considering Article 8 family and private life cases.

The fact that the Article 8 claim falls to be refused and there are no exceptional circumstances does not mean that the claim should be certified. A claim can only be certified where it is clearly unfounded. A human rights claim must only be certified where it is so clearly without substance that it is bound to fail. The decision on whether to certify must take into account the family's claim as a whole and the individual circumstances of every applicant within it in their own right.

For example, a human rights claim may be suitable for certification where:

- there is a partner application, but the claim does not raise any circumstances which suggest that family life with their partner could not continue overseas in Rwanda and there is no evidence of any exceptional circumstances
- the basis of the application is as a partner, but there is no evidence that the relationship is genuine or subsisting
- the basis of the application is as a partner with a dependent child but there is no evidence of a genuine and subsisting parental relationship between parent

and child, for example, no evidence that the parent sees the child or has any involvement in their life
- the basis of the claim is as a parent but there is no evidence of a child

A claim based on other family relationships may be suitable for certification where:

- the Article 8 claim is based on a relationship other than partner, child or adult dependent relative, such as 2 adult siblings or a parent/ child relationship where the child is aged 18 or above, and there is no evidence of any arguably unusual level of dependency or exceptional features in the claim

A private life claim may be suitable for certification where there is a:

- claim based on limited job prospects in their country of origin
- claim that private life would be breached owing to a medical condition, but no evidence of this condition has been provided, the condition is not serious or treatment is available in the country of return
- claim that a student or worker would be unable to continue with their studies or work and there is no evidence of an established private life other than normal level of social interaction as a student or worker
- claim by an adult aged 25 and the claim does not raise any circumstances which suggest there would be significant obstacles to the claimant's integration into the country to which they would have to go if required to leave the UK, and there is no evidence of any exceptional circumstances

Caseworkers should note that the above are only examples of cases that may be suitable for certification and that each case must be assessed on its individual merits.

When considering whether to certify an Article 8 claim, caseworkers are not simply applying the guidance on whether the claim should be refused. The mere fact that a claim falls to be refused does not mean the claim should be certified. For example, in a complex case where the rules are not met and there are no exceptional circumstances, the claim may nonetheless not be clearly unfounded even if the claim is refused.

Evidence for the purposes of certification can include claims made by a person in their application even where this is not supported by documentary evidence. However, where no documentation is provided and there is no explanation for the omission then it is open to caseworkers to make enquiries as to why documentary evidence has not been provided. In cases where a person has failed to provide evidence when they could reasonably be expected to do so the claim may be certified as clearly unfounded. This is provided the absence of documentary evidence means it is bound to fail and there are no other reasons as to why the claim should not be certified.

Examples of Article 8 claims not likely to be suitable for certification:

- there is a child of the family who is a British Citizen

- there is a child of the family who is not a British Citizen but has lived in the UK for 7 years or longer
- there is a child who is not British or who has been in the UK for less than 7 years, where there is evidence of potential exceptional circumstances or compassionate or compelling grounds that may mean it is in the child's best interests for them to remain in the UK
- there are obstacles to the applicant continuing family life outside the UK, but these obstacles are not insurmountable
- there is evidence of circumstances that may amount to exceptional circumstances (though the caseworker does not consider that the circumstances are exceptional and therefore the claim falls to be refused)

This is not an exhaustive list.

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Human rights certification

You must refer to Inadmissibility: safe third country cases when considering certification.

If a person has made representations that can be considered a human rights claim, and if a certificate has been issued under paragraph 17 of Schedule 3 to the 2004 Act (see Removal certification), then you should consider whether the human rights claim should be certified. The human rights claim may be certified under paragraph 19(c) of Schedule 3 to the 2004 Act, if the claim is assessed to be clearly unfounded (noting what has already been said about the conclusions the Safety of Rwanda Act requires you to make in respect of certain claims and what it requires in relation to consideration of the evidence). You must certify your removal decision before you can certify a human rights claim.

To be clearly unfounded, you must be satisfied that the claim cannot, on any legitimate view, succeed. Where a person claims that Rwanda is not a safe country for them, that claim will be clearly unfounded if it could not, on any legitimate view, be regarded as establishing by compelling evidence relating to their particular individual circumstances, that Rwanda would not be a safe country for them.

The cases of Thangarasa and Yogathas [2002] UKHL 36 and ZL and VL v SSHD [2003] EWCA Civ 25 give the following guidance:

- a manifestly unfounded claim is a claim which is so clearly without substance that it is bound to fail
- it is possible for a claim to be manifestly unfounded even if it takes more than a cursory look at the evidence to come to a view that there is nothing of substance in it

You must consider:

- the factual substance and detail of the claim
- how it stands with the known background data
- in the round whether it is capable of belief
- whether some part is capable of belief
- whether, if eventually believed in whole or part, it is capable of meeting the requirements of the Refugee Convention or Human Rights Convention

The case of FR and KL (2016) v SSHD EWCA CIV 605 gave the following additional guidance:

- it is important that separate consideration is given to the decision to refuse the claim and the decision to certify - when you have decided to refuse the claim you must then consider whether the claim is clearly unfounded
- there is a 2-stage reasoning process in play - it is not permissible to have an approach that simply says because the claim is refused the claim is refused as clearly unfounded

If you decide the claim is clearly unfounded, you must set out the reasons why you have decided the claim is clearly unfounded.

The effect of this certificate is that the claimant may not bring an appeal in reliance on a human rights claim.

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Explaining the certification decision

This section gives you guidance on the need for the decision letter to give reasons why a claim is being certified.

The decision letter should make clear the provision under which the claim is certified. Where you have decided to refuse the claim, you must then consider whether the claim is clearly unfounded. Where you decide the claim is clearly unfounded you must set out the reasons why you have decided the claim is clearly unfounded. You should make it clear when considering certification you have not taken into account credibility.

However, if you are certifying on the basis that the claim is not credible you must set out on what basis you are satisfied that nobody could believe the claim.
You should provide reasons why the claim is clearly unfounded. For example, in a protection claim where you consider that the claim is clearly unfounded because there is sufficiency of protection you should make that clear at the point in the letter where you are certifying the claim, referring to the relevant case specific and country information.

The same principle applies to a human rights claim. For example, where family life with a partner is raised you should explain why the claim is clearly unfounded, which can include references to lack of evidence of a genuine relationship or no evidence that family life cannot continue overseas.

However, the fact that a claim does not succeed under the rules is not of itself sufficient reason to certify a claim. In order to certify the claim, the decision maker must be satisfied that the claim is ‘clearly unfounded’.

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