

# Asylum Changes: Fresh claims/further submissions in the UK

By Vitalis Madanhi

It is important to understand the effect of the recent changes to people seeking asylum in the UK. The essence of this article is to clarify the position and to help those who may be caught up with the new changes. On the 13th October 2009 the UK Border agency announced that with effect from the 14th October those who wish to make further submissions (fresh claims and applications as further submissions), have to make them at Liverpool and those who wish to claim asylum for the first time in the UK should make them at Croydon. Nothing much has changed with regards to those who are claiming asylum for the first time as people have always been required to claim in person at Croydon. The only change in this regard is that people are no longer expected to attend at the offices of the Liverpool UK Border Agency office for the first time seeking asylum. Those seeking asylum for the first time should attend in person at Croydon and it becomes more prudent to make an appointment before one sets off.

The major effect regarding the recent changes by the UK Border Agency relates to the aspect of further submissions after an asylum claim was made and determined. People who have been in the UK after their claims for asylum had been refused by the Home Office and the courts then a person with new significant developments which have since taken place could make a fresh claim at the Home Office. The term a fresh claim, could be somehow confusing as people tend to confuse it with an initial claim of asylum. A fresh claim is basically a second phase in the process of asylum seeking. The instructive rule dealing with fresh claims is rule 353 of the immigration rules.

The rule states that, *"when a human rights or asylum claim has been refused or withdrawn or treated as withdrawn under paragraph 333C of these rules and any appeal relating to that claim is no longer pending, the decision maker will consider any further submissions and, if rejected, will then determine whether they amount to a fresh claim. The submissions will amount to a fresh claim if they are significantly different from the material that has previously been considered. The submissions will only be significantly different if the content:*

- 1. Had not already been considered and*
- 2. Taken together with the previously considered material, created a realistic prospect of success, notwithstanding its rejection*

The recent changes very much hinges on rule 353 as outlined above. The issue which arises is how people can make these further submissions to the Home Office in the light of the new guidance. The application of this rule is triggered by the making of further submissions. Further submissions are basically additional information relating to why a person fears to return to one's country. There must be substance to the additional details. It is a question of fact whether additional material constitutes a further submission. The case of WM/DRC has dealt with fresh claims. Further submissions merely means representations- short or long, reasoned, advanced on asylum or human rights grounds. An applicant would be obliged to advance a human rights and asylum claim. If the representations are unreasoned, or barely reasoned, they will no doubt be readily and summarily dismissed by the secretary of State. This may even result with the certification of the whole asylum claim if the further submissions are merely frivolous. It is

important to pay attention to the reliability of the new material provided which one wishes to use in a fresh claim.

New material to be advanced in a fresh claim may assert a human rights or asylum claim in a different category from what was claimed the first time (for example, a claim under ECHR article 3 where only article 8 had been earlier advanced, or a claim based on fear of religious persecution where political persecution had been advanced before). The same category of claim may be persisted in, but new facts asserted to support it. At all times it becomes necessary to assess as to whether there would be a realistic prospect of success in the fresh claim.

With the new changes there is a basic form which is provided or your solicitor should be able to bring it to your attention and you need to ensure that full issues are addressed covering new developments which have to be significant and relevant to you. The details should not have been previously available and to gain appeal rights any such new details should be submitted without delay. You should also bear in mind that you need to submit the old reasons for refusal, appeal determination and any other submissions which you may have already made. In my view people should seek legal advice as issues have to be properly articulated to highlight all relevant matters. In as much as a person has to attend at Liverpool in person, the fact remains that legal representation remains crucial in the way the further submissions are outlined and prepared.

It is important to note that the procedures for people who claimed asylum after the 5th March 2007, are different because they have to contact the case owners who dealt with their matters in the first place. These are normally places where people report. Further submissions can be made by asylum seekers if their personal circumstances or circumstances in their home countries have changed. Legal representatives may also help you with regards to guidance on the changing case law and country guidance cases to support any such claims. I urge people to seek legal advice. Once bitten twice shy!

*Disclaimer: This article only provides general information and guidance on UK immigration law. The specific facts that apply to your matter may make the outcome different than would be anticipated by you. The writer will not accept any liability for any claims or inconvenience as a result of the use of this information.*