

Eligibility for asylum support for Afghan refused asylum-seekers

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Information and advice for Afghans who have recently arrived on one of the resettlement schemes can be found here:

<https://www.gardencourtchambers.co.uk/news/arap-resettlement-and-family-reunion-factsheets-for-afghan-citizens-seeking-asylum-in-uk>

<https://gmiau.org/information-about-afghanistan/#afghan-citizens-resettlement-scheme>

<https://bit.ly/afghan-handbook>

<https://askcpag.org.uk/document-downloads/207247/benefits-for-resettled-afghans>

We understand that those who have arrived on these schemes are granted leave to remain with recourse to public funds.

Outside the resettlement procedures, there is no special treatment for Afghan asylum-seekers or refused asylum-seekers. There are over 3000 Afghans with outstanding asylum applications and there will be many more in the UK who have previously been refused asylum. At present, there is no expedited procedure for granting all Afghan asylum applications nor to allow previously refused Afghans to apply make further submissions. On the 16th August 2021 the Home Office withdrew their country guidance on Afghanistan. On the 6th October 2021 the Home Office produced 2 Country Policy Information Notes on Afghanistan which can be found here:

<https://www.gov.uk/government/publications/afghanistan-country-policy-and-information-notes>

These policies confirm that internal relocation to Kabul is no longer possible and provides a broad set of indicators for defining who faces a risk from the Taliban. Given this policy and the situation in Afghanistan, it is likely that many Afghans who were previously refused asylum will be able to point to a material change of circumstances that give grounds for a new, non-abusive fresh claim. For those Afghans who have been previously refused asylum, they will need to make further submissions and should get an immigration adviser to assist them do so. Since the 2nd August 2021 the Home Office have recommenced the requirement for further submissions to be made in person at the Further Submission unit in Liverpool, Glasgow or Belfast. For further advice on claiming asylum and making further submissions see here:

<https://bit.ly/afghan-handbook>

<https://righttoremain.org.uk/toolkit/freshclaim/>

Eligibility for Section 4 support

Refused asylum-seekers may be eligible for s4 support if they meet one of the criteria outlined under reg 3(2). For more on s4 eligibility see Factsheet 2.

Taking all reasonable steps reg 3(2)(a)

The Home Office has suspended forced returns to Afghanistan. However, it may still be possible to register your interest with the Assisted Voluntary Return team. ASAP does not recommend that refused asylum-seekers apply for support under this category unless they are willing to return.

No viable route of return reg 3(2)(c)

The Secretary for State has not declared that there is no viable route of return. Reg 3(2)(c) is therefore not an option.

Breach of Human Rights reg 3(2)(e)

Afghans who have previously been refused asylum will generally have to rely on reg 3(2)e when applying for s4 support.

The Home Office may suggest that Afghans will need to make further submissions in order to be eligible for s4 support under reg 3(2)(e). If the further submissions have not yet been lodged **this does not** necessarily mean that an applicant cannot get support. The case of [R\(NS\) v First-tier Tribunal \[2009\] EWHC 3819 \(Admin\)](#) held that there are “a variety of factual circumstances” in which reg 3(2)(e) may apply and each case should be considered on its own merits. In the recent case [SSHD, R v First-tier Tribunal \(Social Entitlement Chamber\) \[2021\] EWHC 1690 \(Admin\)](#), the Judge rejected the Home Office assertion that only those who have submitted, or are about to submit, a fresh claim are eligible for support under reg 3(2)(e). He described human rights assessments as ‘multifactorial’ (para 137), meaning that there might be various aspects of a client’s circumstances which means they are entitled to s4 support under reg 3(2)(e).

As explained above many Afghan refused asylum-seekers will be able to point to a material change of circumstances that give grounds for a new, non-abusive fresh claim. Ideally when applying for s4 support, Afghans who have previously been refused asylum will have instructed a solicitor who can clearly articulate the nature of the new claim and give a time-frame for completion of the further submissions. However, if your client is taking proactive steps to advance that claim, arguably, it is not reasonable to expect them to return to Afghanistan to avoid destitution while they are perusing what is likely to be a non-abusive fresh claim.

The ‘mere assertion’ that the applicant intends to make further submissions is not likely to be sufficient to generate eligibility under reg 3(2)(e) (see [AS/14/11/32141](#)). The applicant would need to show what steps they have taken to get legal advice on their further

submissions, the barriers they faced in doing so and be able to articulate the nature of the further submissions. Other factors such as the age, health and gender of the applicant may also be relevant for the assessment of whether or not it is reasonable to expect the applicant to leave the UK to avoid destitution.

It is therefore crucial that Afghan refused asylum-seekers are referred to immigration advisers. When referring clients to an immigration adviser for assistance making a fresh claim it is useful to include:

- i) evidence of means
- ii) the last unchallenged determination of an immigration judge (First Tier or Upper Tribunal),
- iii) any decisions from the Home Office
- iv) If these are not available, consider contacting client's previous immigration adviser or helping the client submit a subject access request to the Home Office for their immigration file
- v) recent medical records if client has mental health problems

Please see our flow chart which takes you through steps you can take to help clients establish eligibility for s4 support.

In summary: There is no blanket eligibility for s4 support for all Afghan refused asylum-seekers. Each applicant will have to make an individual case as to why it is not reasonable for them to leave the UK to avoid destitution. Eligibility is likely to arise because they are pursuing a fresh claim, but other factors such as age, gender and vulnerability may play a part in the multifactorial human rights assessment.