



Asylum and Immigration (Treatment of Claimants, etc.) Act 2004

2004 CHAPTER 19

Treatment of claimants

8 Claimant's credibility

- (1) In determining whether to believe a statement made by or on behalf of a person who makes an asylum claim or a human rights claim, a deciding authority shall take account, as damaging the claimant's credibility, of any behaviour to which this section applies.
- (2) This section applies to any behaviour by the claimant that the deciding authority thinks—
 - (a) is designed or likely to conceal information,
 - (b) is designed or likely to mislead, or
 - (c) is designed or likely to obstruct or delay the handling or resolution of the claim or the taking of a decision in relation to the claimant.
- (3) Without prejudice to the generality of subsection (2) the following kinds of behaviour shall be treated as designed or likely to conceal information or to mislead—
 - (a) failure without reasonable explanation to produce a passport on request to an immigration officer or to the Secretary of State,
 - (b) the production of a document which is not a valid passport as if it were,
 - (c) the destruction, alteration or disposal, in each case without reasonable explanation, of a passport,
 - (d) the destruction, alteration or disposal, in each case without reasonable explanation, of a ticket or other document connected with travel, and
 - (e) failure without reasonable explanation to answer a question asked by a deciding authority.
- (4) This section also applies to failure by the claimant to take advantage of a reasonable opportunity to make an asylum claim or human rights claim while in a safe country.

Status: This is the original version (as it was originally enacted).

- (5) This section also applies to failure by the claimant to make an asylum claim or human rights claim before being notified of an immigration decision, unless the claim relies wholly on matters arising after the notification.
- (6) This section also applies to failure by the claimant to make an asylum claim or human rights claim before being arrested under an immigration provision, unless—
- (a) he had no reasonable opportunity to make the claim before the arrest, or
 - (b) the claim relies wholly on matters arising after the arrest.
- (7) In this section—
- “asylum claim” has the meaning given by section 113(1) of the Nationality, Immigration and Asylum Act 2002 (c. 41) (subject to subsection (9) below),
- “deciding authority” means—
- (a) an immigration officer,
 - (b) the Secretary of State,
 - (c) the Asylum and Immigration Tribunal, or
 - (d) the Special Immigration Appeals Commission,
- “human rights claim” has the meaning given by section 113(1) of the Nationality, Immigration and Asylum Act 2002 (subject to subsection (9) below),
- “immigration decision” means—
- (a) refusal of leave to enter the United Kingdom,
 - (b) refusal to vary a person’s leave to enter or remain in the United Kingdom,
 - (c) grant of leave to enter or remain in the United Kingdom,
 - (d) a decision that a person is to be removed from the United Kingdom by way of directions under section 10(1)(a), (b), (ba) or (c) of the Immigration and Asylum Act 1999 (c. 33) (removal of persons unlawfully in United Kingdom),
 - (e) a decision that a person is to be removed from the United Kingdom by way of directions under paragraphs 8 to 12 of Schedule 2 to the Immigration Act 1971 (c. 77) (control of entry: removal),
 - (f) a decision to make a deportation order under section 5(1) of that Act, and
 - (g) a decision to take action in relation to a person in connection with extradition from the United Kingdom,
- “immigration provision” means—
- (a) sections 28A, 28AA, 28B, 28C and 28CA of the Immigration Act 1971 (immigration offences: enforcement),
 - (b) paragraph 17 of Schedule 2 to that Act (control of entry),
 - (c) section 14 of this Act, and
 - (d) a provision of the Extradition Act 1989 (c. 33) or 2003 (c. 41),
- “notified” means notified in such manner as may be specified by regulations made by the Secretary of State,
- “passport” includes a document which relates to a national of a country other than the United Kingdom and which is designed to serve the same purpose as a passport, and
- “safe country” means a country to which Part 2 of Schedule 3 applies.
- (8) A passport produced by or on behalf of a person is valid for the purposes of subsection (3)(b) if it—

- (a) relates to the person by whom or on whose behalf it is produced,
 - (b) has not been altered otherwise than by or with the permission of the authority who issued it, and
 - (c) was not obtained by deception.
- (9) In subsection (4) a reference to an asylum claim or human rights claim shall be treated as including a reference to a claim of entitlement to remain in a country other than the United Kingdom made by reference to the rights that a person invokes in making an asylum claim or a human rights claim in the United Kingdom.
- (10) Regulations under subsection (7) specifying a manner of notification may, in particular—
- (a) apply or refer to regulations under section 105 of the Nationality, Immigration and Asylum Act 2002 (c. 41) (notice of immigration decisions);
 - (b) make provision similar to provision that is or could be made by regulations under that section;
 - (c) modify a provision of regulations under that section in its effect for the purpose of regulations under this section;
 - (d) provide for notice to be treated as received at a specified time if sent to a specified class of place in a specified manner.
- (11) Regulations under subsection (7) specifying a manner of notification—
- (a) may make incidental, consequential or transitional provision,
 - (b) shall be made by statutory instrument, and
 - (c) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (12) This section shall not prevent a deciding authority from determining not to believe a statement on the grounds of behaviour to which this section does not apply.
- (13) Before the coming into force of section 26 a reference in this section to the Asylum and Immigration Tribunal shall be treated as a reference to—
- (a) an adjudicator appointed, or treated as if appointed, under section 81 of the Nationality, Immigration and Asylum Act 2002 (c. 41) (appeals), and
 - (b) the Immigration Appeal Tribunal.