



UNIT 10

Procedures for Cancellation
of Refugee Status

PROCEDURES FOR CANCELLATION OF REFUGEE STATUS

10.1 Cancellation of Refugee Status by UNHCR

- Cancellation procedures permit UNHCR to invalidate the refugee status of persons who, **at the time of recognition, were not entitled to refugee status**, either because they did not fall within the inclusion criteria or the exclusion criteria applied.
- Cancellation procedures should be **distinguished from cessation procedures which are intended to reassess refugee status that was properly conferred, but may no longer be appropriate** owing to a change in circumstances affecting the need for protection (see § 11 - *Procedures for Cessation of Refugee Status*). Cancellation procedures should also be distinguished from procedures for review and revision of an RSD decision before it is issued to the Applicant (see § 4.4 - *Procedures for Review of RSD Decisions*).
- Cancellation should be **distinguished from procedures for revocation of refugee status**, which could result in withdrawal of refugee status that was properly conferred, when subsequent to recognition a refugee engages in conduct that would bring him/her within the exclusion clauses of Article 1 F (a) or (c), which would make him/her undeserving of continued international refugee protection. The procedures set out below for cancellation procedures would generally apply to procedures for revocation of refugee status. UNHCR Offices should consult DIP guidelines on the application of the exclusion clauses, and seek additional guidance from DIP as required when examining the appropriateness of revocation of refugee status.
- If reliable information comes to light, after an individual has been formally recognized to be a refugee by UNHCR, indicating that the individual should not have been recognized, UNHCR should initiate procedures to re-examine the correctness of the RSD decision and to assess whether it is appropriate to cancel the refugee status.
- UNHCR procedures to cancel refugee status that was wrongly conferred are necessary to **preserve the integrity of recognition of refugee status by UNHCR**. However, given the significance of the procedures for the individual concerned, and the potentially very serious consequences of unjustified cancellation of refugee status, UNHCR cancellation procedures must incorporate the **standards of fairness and due process** that apply to RSD procedures.
- Cancellation procedures should not be viewed as a remedy for deficient RSD procedures, or a supplement to or replacement for effective procedures for review and appeal of RSD decisions.
- Cancellation of refugee status must be **determined on an individual basis** following the examination of the facts and circumstances relating to the individual concerned, during which he/she is given the opportunity to make relevant submissions (see § 10.3.3 - *The Cancellation Interview*).

10.2 Grounds for Commencing Cancellation Procedures

- A recognized refugee should be referred to cancellation procedures if there is good reason to believe that **recognition may have been granted erroneously as a result of** one or more of the following factors:
 - Misrepresentation or concealment by the individual concerned or a third party of facts that were material to the RSD determination, with or without fraudulent intent;
 - Misconduct by the individual, including threats or bribery;
 - Error of fact or law by UNHCR in applying the inclusion or exclusion criteria;
 - Misconduct or administrative error by UNHCR at any stage in the RSD procedures, including the wrongful issuance of UNHCR documents.
- Cancellation procedures **should not be commenced solely on the basis of a change of opinion regarding a credibility finding** about the facts on which the RSD decision was based. However, there may be cases where the credibility finding regarding material facts is inconsistent with new and reliable information, or is clearly contradicted by information that was on the RSD file. In such cases, a reassessment of the credibility finding may be necessary to determine whether the refugee decision was based on an error of fact.
- When examining the existence of grounds for Cancellation, the **relevant inquiry is whether an incorrect refugee determination was made**, rather than the intent of the persons whose words or actions led to the incorrect decision.
- The determination that grounds exist to refer an individual to Cancellation procedures should be made by the **RSD Supervisor**, who should provide **written authorization** to commence cancellation procedures.

10.3 Cancellation Procedures

10.3.1 Notice to the Individual in Cancellation Procedures

- Individuals who are referred to cancellation procedures should receive **notice of the reasons** for the commencement of cancellation procedures, as well as **information regarding the relevant procedures** in the UNHCR Office.
- The individual concerned should also be advised that in cancellation procedures he/she will have the opportunity to present any information relating to **current protection needs**, which will be examined by UNHCR staff. Procedures for assessing new evidence regarding eligibility for refugee status are set out below in § 10.3.4 - *Assessing New Evidence relating to the Refugee Criteria*.
- The requirement to notify the individual concerned, and to give the opportunity to reply to the information that has led to the cancellation procedure, are fundamental elements of fairness and due process. Cancellation procedures should include procedures and requirements for giving effective notice and for establishing that the individual has been duly notified.

- **If it is not possible to notify the individual concerned**, cancellation procedures should, in principle, not proceed. In such cases, the written authorization to commence cancellation procedures and all other documents relating to the cancellation should be retained on the individual file. The individual's status as a person with respect to whom cancellation procedures are authorized should be clearly noted on the File Action Sheet and any central database in which information about the individual is recorded.
- In exceptional cases, including cases where an individual has been indicted by a legitimate international criminal tribunal, the UNHCR Office may commence cancellation examination without providing advance notice to the individual concerned. Where there is **reliable and compelling evidence to support cancellation, but it is not possible to notify the individual concerned**, cancellation proceedings may be undertaken by a UNHCR Office, as an exceptional measure, and in accordance with established review and approval procedures.

10.3.2 File Assignment for Cancellation Procedures

- Files for cancellation procedures should be assigned to Protection staff who have **training and experience with RSD**. Wherever possible, cancellation files should be assigned to Protection staff who are authorized to review RSD decisions or who have supervisory responsibilities in RSD procedures.
- Cancellation procedures that are likely to involve examination of the **application of the exclusion criteria** should be assigned to Protection staff who have knowledge of the exclusion principles. The considerations set out in § 4.1 - *Assigning Files for RSD Adjudication* are relevant to the assignment of files in cancellation procedures.

10.3.3 The Cancellation Interview

- Every individual whose claim is examined pursuant to cancellation procedures must have **an individual Cancellation Interview**, in which he/she should be given the opportunity to respond to specific allegations or provide other evidence that is relevant to the decision whether or not to cancel refugee status. The individual should be given adequate time to prepare for the Cancellation Interview.
- The purpose of the Cancellation Interview is to gather sufficient information to permit an **assessment of the correctness of the decision to recognize refugee status** and to identify any reason why an individual who was improperly recognized in the past should continue to have refugee status.



- The Protection staff member who conducts the Cancellation Interview should be thoroughly familiar with the RSD file of the individual concerned, including the evidence upon which the cancellation proceedings are based.
- The principles and procedures for RSD Interviews, as set out in § 4.3 - *The RSD Interview*, are relevant and should be reflected in the procedures for conducting Cancellation Interviews. In particular, the Protection staff member who conducts the Cancellation Interview should keep a **detailed written transcript**. The principles and procedures set out in § 4.3.8 - *Recording the RSD Interview* should also be applied in Cancellation Interviews.
- At the Cancellation Interview, the individual should be given the **opportunity to present new evidence relating to the existence of a well-founded fear of persecution** in the country of origin at the time of the Cancellation Interview (see § 10.3.4 - *Assessing New Evidence relating to the Refugee Criteria*). The individual should also be informed of the right to appeal a cancellation decision.
- If an individual has been **duly notified** of cancellation proceedings (see § 10.3.1 - *Notice to the Individual in Cancellation Procedures*), **but does not attend the Cancellation Interview**, a determination of the appropriateness of cancellation of the individual's refugee status should be made on the basis of the available information.

10.3.4 Assessing New Evidence relating to the Refugee Criteria

- The Protection staff member who conducts the Cancellation Interview should consider new evidence regarding the individual's eligibility for refugee status at the time of the Cancellation Interview.
- Cancellation of refugee status and RSD adjudication are distinct procedures, to which distinct criteria apply. However, for reasons of consistency and efficiency, if the individual concerned provides information relating to his/her eligibility for refugee status at the time of the Cancellation Interview, the Protection Staff member should examine current protection needs and eligibility for refugee status.
- When conducting RSD adjudication in the context of cancellation procedures Protection staff should incorporate the procedural safeguards that are applicable in standard RSD procedures. Concurrent processing should not undermine the thoroughness or the reliability of the RSD. The individual should be given the necessary opportunity to prepare and present the claim. If the facts relating to the current RSD adjudication raise complex issues, or if research or other preparation is necessary to permit the Protection staff member to effectively question the individual, a **Complementary RSD Interview** should be scheduled.
- When RSD is undertaken concurrently with cancellation procedures **separate Assessments** should be prepared for the cancellation decision and the RSD decision. All RSD assessment should be prepared using the **RSD Assessment Form**. The principles and procedures set out in § 4.4 - *Procedures for Review of RSD Decisions* and § 6 - *Notification of RSD Decisions* should also apply.

10.3.5 The Cancellation Assessment

- In each case, the cancellation decision should be recorded in a cancellation Assessment, which should include the following:

The Cancellation Assessment

- Detailed transcript of the Cancellation Interview;
- Assessment of the reliability of evidence relevant to the grounds for cancellation and the credibility of the individual;
- A determination of whether grounds for cancellation have been established and, if so, a recommendation that refugee status should be cancelled.

10.3.6 Review of the Cancellation Decision

- Cancellation procedures in each UNHCR Office should include a mechanism for **review** of all cancellation decisions. The review and approval by the **RSD Supervisor** or the **Head of Office** should be required in all cases where a determination is made to cancel refugee status.
- When a decision is made in first instance by a UNHCR Office to cancel the refugee status of an individual, the RSD Supervisor should forward the Cancellation Assessment, and all other relevant information on the file, including the initial RSD Assessment, to the **Legal Advisor of the relevant Bureau and DIP at UNHCR Headquarters**.
- Unless alternative arrangements are agreed to by DIP, the **approval by DIP** is required to cancel the status of any individual who was recognized as a refugee by UNHCR.

10.3.7 Notification of the Cancellation Decision

- Individuals whose refugee status is cancelled by UNHCR must receive **notice in writing of the decision and the reasons** supporting the cancellation decision. The general principles and procedures set out in § 6 - *Notification of RSD Decisions* are also relevant in cancellation procedures.
- Notification of the cancellation decision should also inform the individual of the **consequences of cancellation** of refugee status, including:
 - Where reliable information exists, the known implications of cancellation of refugee status for the individual's legal status in the host country;
 - The effect of cancellation on assistance received by UNHCR, including processing for resettlement;
 - The cancellation of the status of individuals who received derivative status as a result of the recognition of the individual whose refugee status is cancelled (see § 10.5 - *Cancellation of Derivative Status*);

- The right to appeal the cancellation decision and the relevant procedures;
 - Procedures with respect to the return of documents issued by UNHCR at the time of recognition (see §10.6 - *Withdrawal of UNHCR Documents in Cancellation Procedures*).
- When the examination of the grounds for cancellation of refugee status is conducted at the same time as the RSD adjudication, it is important to avoid confusion regarding the person's status with UNHCR as a result of the two procedures. The decision in cancellation procedures should not be issued until the RSD decision has been made and the individual's current eligibility for refugee status is determined.
- If it is determined that an individual was incorrectly recognized in the past, but has **subsequently become eligible for refugee status**, the individual should generally be notified of the decision taken with respect to the cancellation of the original refugee status as well as the decision to recognize him/her as a refugee based on subsequent facts and developments. In such cases, it is not necessary to provide reasons for the cancellation and RSD decisions unless this is requested by the individual.
- In light of the serious implications of cancellation procedures, and potential confusion and uncertainty associated with these procedures, particularly when adjudication for RSD is undertaken concurrently, procedures for notification should, wherever possible, include the possibility to receive **counselling on the decision with UNHCR staff**. Notification should permit the individual to know the decision in each procedure but to clearly understand their status with UNHCR as a result of these procedures.

10.4 Appeal of Decisions to Cancel Refugee Status

- Individuals whose refugee status is cancelled by UNHCR have the **right to appeal the cancellation decision**. The appeal should be determined by a Protection staff member who was not involved in the determination of the initial refugee claim or the cancellation decision.
- While the appeal of the cancellation decision is pending, the individual's refugee status should remain valid.
- The principles and procedures set out in § 7 - *Appeal of Negative RSD Decisions* are relevant to, and should inform the development of appeal procedures for decisions to cancel refugee status.
- A final cancellation decision should result in the closure of the file. Cancellation would not prevent an individual from requesting a re-opening of the RSD file at a later date should a change in circumstances affect his/her need for refugee protection (see § 9.2 - *Re-Opening RSD Files*).

10.5 Cancellation of Derivative Status

- Cancellation of refugee status results in the cancellation of the derivative refugee status of family members/dependants of the individual concerned. The cancellation of derivative status should be noted on the appropriate individual file and on any central database used to record information regarding the family member/dependant.
- UNHCR Offices should, wherever possible, take steps to notify persons whose derivative status is cancelled and to inform them that the cancellation does not affect their right to apply for RSD should they have independent grounds to claim refugee protection.

10.6 Withdrawal of UNHCR Documents in Cancellation Procedures

- In the interest of maintaining the integrity of documentation issued by UNHCR to recognized refugees, UNHCR Offices should take **all feasible steps to withdraw UNHCR documentation issued** to individuals whose refugee status has been cancelled.
- At the time of notification of the cancellation decision, every individual whose refugee status is terminated should be requested to return the UNHCR Refugee Certificate or any other documentation that was issued by UNHCR upon recognition. Documentation issued by UNHCR to family members/dependants who obtained derivative status should also be returned to UNHCR.
- Wherever possible, the UNHCR Refugee Certificate held by refugees whose initial status was determined to be incorrect, but who were found to have become subsequently eligible for refugee status should be **amended to reflect the later date of recognition**.