



# UNIT 5

Processing Claims Based on  
the Right to Family Unity

# PROCESSING CLAIMS BASED ON THE RIGHT TO FAMILY UNITY

## 5.1 Derivative Refugee Status

### 5.1.1 General Principles

- Family members/dependants of a recognized refugee may apply for derivative refugee status in accordance with their **right to family unity**.
- Family members/dependants who are determined to fall within the criteria for refugee status in their own right should be granted refugee status rather than derivative refugee status.
- Individuals who obtain derivative refugee status enjoy the **same rights and entitlements as other recognized refugees**, and should retain this status notwithstanding the subsequent dissolution of the family through separation, divorce, death, or the fact that a child reaches the age of majority. Procedures relating to cancellation and cessation of refugee status will also apply to persons who have received derivative refugee status (see § 10 - *Procedures for Cancellation of Refugee Status*; § 11 - *Procedures for Cessation of Refugee Status*).
- RSD procedures in every UNHCR Office should ensure that the accompanying family members/dependants of Principal Applicants have been **fully informed** about the refugee criteria and the right to make an individual claim, if they have individual protection needs. Accompanying family members/dependants should also be advised of the criteria and procedures for obtaining derivative status. (See § - 3.2.6 - *Registration Interview of Family Members/Dependants*).
- Persons who may have **grounds to make an independent refugee claim** should not be discouraged from doing so solely because they may be eligible for derivative status under the right to family unity.

## 5.1.2 Persons Eligible for Derivative Status

- The **categories of persons** who should be considered to be **eligible for derivative status** under the right to family unity include:

### Nuclear Family Members

- Spouse of the Principal Applicant (including all legally married spouses in polygamist situations, a person engaged to marry the Principal Applicant, common law spouses including same sex couples, spouses who have entered into a customary marriage);
- All unmarried children of the Principal Applicant who are under 18 years;
- The parents or primary caregivers of a Principal Applicant who is under 18 years, as well as the dependants of the adult parent or caregiver;
- The minor siblings of a Principal Applicant who is under 18 years.

For the purpose of assessing eligibility for derivative status, the age should be assessed as of the date on which the Principal Applicant was recognized.

- **Other family members and certain other individuals may also be eligible** for derivative status under the right to family unity if it is determined that a **relationship of social, emotional or economic dependency** exists between them and the Principal Applicant. Individuals who may fall within this category include:

### Persons other than nuclear family members who may be eligible for derivative refugee status include:

- Dependant parents of an adult Principal Applicant;
- Married children of the Principal Applicant who remain dependant on the Principal Applicant, and the spouse of married children where the couple remains dependant on the Principal Applicant;
- Dependant children of the Principal Applicant who are over 18;
- Other dependant relatives, including brothers, sisters, aunts, cousins, etc. who were living with the Principal Applicant in the country of origin, or whose situation has subsequently changed in such a way as to make them dependant upon the Principal Applicant in the host country. In principle, such individuals should be part of household of the Principal Applicant;
- Foster children or other individuals who, though not related to the Principal Applicant, have a dependency relationship that is similar to the categories of family members described above.



- An assessment of the existence of a family or other dependency relationship is based on a **determination of fact** and requires a detailed examination of all available documents and other information regarding the personal circumstances of the Applicant for derivative status.
- UNHCR Offices should adopt a **flexible approach** when applying the criteria for derivative refugee status, and should take into account cultural norms or other special circumstances that may have affected the composition of the Principal Applicant's household unit.
- Determination of eligibility for derivative status by UNHCR Offices should not be based upon the criteria used by resettlement countries.

### 5.1.3 Persons not Eligible for Derivative Status

- **Family members/dependants of rejected Applicants**, are not eligible for derivative status. If the Principal Applicant appeals the first instance RSD decision, the persons seeking derivative status should be granted the same rights and protection as the Principal Applicant until the Appeal Application has been decided.
- **Persons who are excluded from obtaining refugee status** are also excluded from obtaining derivative refugee status. Applicants who have already been excluded under RSD procedures are therefore ineligible to apply for derivative status. Family members/dependants of the Principal Applicant who fall within the exclusion criteria would also be ineligible for derivative status. The principles and procedures to assess the application of the exclusion clauses set out in § 4.8 - The Application of the Exclusion Clauses should guide the determination of whether the exclusion clauses apply to Applicants for derivative status.
- Family members or other dependants who are **nationals of the host country or of another country** other than the Principal Applicant's country of origin are not eligible for derivative status, unless they fulfil the refugee criteria themselves. Resettlement submissions may preserve family unity even when the eligibility for derivative status would be limited.

### 5.1.4 Derivative Status Applications Involving Separated Families

- The criteria and procedures set out in this unit also apply to assess the eligibility of Applicants for derivative status **who arrive in, or are registered by UNHCR in the host country after the Principal Applicant has been recognized by the UNHCR Office.**
- The criteria for eligibility for derivative status apply in the examination for **Applications by family members/dependants of a Principal Applicant who is in another country of asylum.** Where the Principal Applicant has an RSD file with another UNHCR Office, the UNHCR Offices involved should coordinate to gather and share the information required to determine the composition of the family unit and the nature of the dependency relationship between the Principal Applicant and the Applicants for derivative status.

## 5.2 Family Unity Procedures

### 5.2.1 The Family Unity Interview

- Eligibility for derivative status under the right to family unity must be determined through a **Family Unity Interview**, with a Protection staff member, which may be conducted during the interviews relating to the Principal Applicant's RSD (see § 4.3.13 - *Interview of Family Members/Dependants*), or in a separate Family Unity Interview following recognition of the Principal Applicant. All persons identified by the Applicant as accompanying family members/dependants, including those who arrived after registration, should have a Family Unity Interview.
- The purpose of the Family Unity Interview is to obtain sufficient information **to assess the existence and nature of a family or dependency relationship** between the Principal Applicant and the Applicants for derivative status.



- Applicants should be advised to bring originals, or best available copies, of all **documents** in his/her possession to support the existence of the family relationship or other dependency relationship between the Principal Applicant and Applicants for derivative status (i.e. marriage or birth certificates etc).
- Wherever possible, the Family Unity Interview should be conducted **by the Eligibility Officer who is responsible to determine the claim of the Principal Applicant**. The Eligibility Officer who conducts the Family Unity Interview should be familiar with the information provided on RSD Application Forms and other relevant information provided by the Principal Applicant in the RSD procedures.

- Where the Applicants for derivative status are **nuclear family members**, the Eligibility Officer should examine documents supporting the existence of the family relationship, including birth certificates and marriage certificates. If the documents are accepted as valid, and are consistent with the information provided by the Applicants, it will generally not be necessary to interview further.
- **Where nuclear family members are not able to provide reliable supporting documentation**, the Eligibility Officer should question the family members regarding the family composition, the living circumstances in the country of origin and in the host country, to assess whether the existence of the family relationship can be accepted.
- When assessing applications for derivative status by **persons other than nuclear family members** Eligibility Officers should request details to determine whether there exists between them a relationship of significant social, emotional or economic dependency. Relevant details include:
  - The nature and duration of the relationship;
  - Living arrangements in the country of origin and in the host country;
  - Any financial, legal, or social responsibilities assumed by the Principal Applicant or the Applicant for derivative status for the other;
  - Any special needs or vulnerability of the Applicant for derivative status or the Principal Applicant, and the existence of a care arrangement between them.
- As in the determination of refugee claims generally, Eligibility Officers should adopt a **flexible approach regarding the requirement to provide documentary evidence** in applications for derivative status and should take into account the situation of the Applicant and the conditions in the country of origin and the host country.



## 5.2.2 Derivative Status Applications Involving Children

- As a general rule, **young children** who are applying for derivative refugee status **should not have a separate Family Unity Interview**, unless the Applicant for derivative status is a separated child (see § 3.4.5 - *Child Applicants (Under 18) / Unaccompanied & Separated Children*).

**It might be necessary and appropriate to interview a child Applicant for derivative status in the following exceptional cases:**

- Serious credibility issues arise in the Family Unity Interviews with the Principal Applicant or another family member/dependant regarding the composition of the household unit, or the legitimacy of the application for derivative status for the child;
  - There are reasons to believe that the child Applicant for derivative status may be in danger of exploitation or abuse;
  - The child Applicant for derivative status is joining the Principal Applicant in the host country, but one or both of the parents of the child have not been interviewed by UNHCR and are reportedly outside of the host country.
- When interviewing child Applicants for derivative status, Eligibility Officers should assess and take into account the maturity of the child and his/her ability to understand events that have occurred and the precise composition of the household unit.
  - When it is necessary to interview children in Family Unity Procedures, UNHCR staff should use **child-appropriate interview techniques** (see § 4.3.7 - *Interviewing Child Applicants*).
  - Applications for Family Unity that involve unaccompanied and separated children should be processed under the procedures for **Accelerated RSD Processing** set out in § 4.6. The procedures and principles set out in § 5.1.4 - *Derivative Status Applications Involving Separated Families* apply to applications for derivative status by separated children.

### 5.2.3 Documenting Family Unity Interviews and Assessments

- **It is generally not necessary to maintain a complete transcript for all Family Unity Interviews.** However, if an Application is based on a dependency relationship other than a nuclear family relationship, or the Family Unity Interview involves examination of complex facts or credibility issues, the Eligibility Officer should record a written transcript of the most significant parts of the interview.

#### The Assessment of Applications for Derivative status should include:

- The name of the Principal Applicant;
  - The basic bio-data of the Applicant for derivative status;
  - The nature of the relationship claimed;
  - A summary of the evidence presented to support the existence of the relationship, including documentary evidence;
  - The transcript of any parts of the Interview that were recorded;
  - A detailed explanation of any evidence that was not accepted;
  - A determination regarding the existence of a family or other dependency relationship that falls within the family unity principle.
- **Review of derivative status decisions** should be conducted in accordance with the procedures set out in § 4.4 - *Procedures for Review of RSD Decisions*.
  - Applicants whose claim for derivative status is rejected have the **right to appeal** the negative decision. Procedures for appeals of rejected claims for derivative status should be governed by the principles and procedures set out in § 7 - *Appeal of Negative RSD Decisions*.

### 5.2.4 Notification of Decision on Applications for Derivative Status

- Procedures and timelines in each UNHCR Office should promote prompt processing of claims for derivative status. The decision should be issued to the Principal Applicant as soon as possible without delay.
- The procedures for notification of negative decisions in applications for derivative status should be consistent with the procedures set out in § 6 - *Notification of RSD Decisions*.