



UNIT 7

Appeal of Negative
RSD Decisions

APPEAL OF NEGATIVE RSD DECISIONS

7.1 The Right to Appeal

7.1.1 The Scope of the Appeal Right

- Every rejected Applicant has the **right to appeal a negative RSD decision**. The appeal should be determined by an Eligibility Officer other than the Officer who heard the claim in first instance. Access to appeal procedures should not be restricted for reasons relating to procedural misconduct by the Applicant during the RSD procedures or the merits of the claim.
- While the appeal application is pending, Applicants should continue to enjoy the rights accorded to them as registered Applicants for RSD.

7.1.2 Informing Rejected Applicants of the Right to Appeal

- Applicants should be informed of the right to appeal a negative RSD decision and the relevant procedures. At the end of the RSD Interview, Eligibility Officers should inform Applicants on the procedures to receive notification of the RSD decision, and the relevant appeal procedures (§ 4.3.11 - *Closing the RSD Interview*).
- At the time of notification of a negative RSD decision, rejected Applicants should also receive **information regarding the right to appeal** the RSD decision and the relevant procedures in the Office, including the Appeal deadline. An **Appeal Application Form (Annex 7-1)** should be provided to the Applicant upon notification (§ 6.1- *Procedures for Notifying Applicants of RSD Decisions*).
- Rejected Applicants should also receive sufficient information regarding the reasons for the rejection to permit them to determine whether an appeal is appropriate and to focus their submissions on issues that are relevant to the appeal application (see § 6.2 - *Notifying Applicants of Negative RSD Decisions*).

7.2 Procedures for Receiving Appeal Applications

- As a general rule, **applications for appeal should be made in writing**. Applicants should complete and sign an **Appeal Application Form** and submit it to the UNHCR Office that decided the claim in first instance, according to the appeal procedures established by that Office.
- Persons who wish to appeal a negative RSD decision should receive any necessary **procedural counselling and assistance by trained UNHCR staff**. Information or advice relating to the substantive elements of the RSD decision or the appeal should only be provided by UNHCR Protection staff members who are involved in RSD.
- Appeal applications that do not strictly conform to formal filing procedures may be accepted where the Applicant has clearly indicated an intention to appeal against the negative RSD decision. As a general rule, the intention to appeal should be communicated in writing.

- UNHCR Offices should establish a **time-limit** within which Applicants must submit the Appeal Application Form, and after which RSD decisions for which no appeal has been made should be considered to be final. As a general rule, the standard time limit **should not be less than 30 days** after the date on which the Applicant has been notified of the RSD decision (see § 6.1 - *Procedures for Notifying Applicants of RSD Decisions*).
- Where Applicants are required to attend at the UNHCR Office on an established date to receive notification the RSD decision, as a general rule, the appeal period should run from the date assigned to the Applicant for notification of the RSD decision (see § 4.3.12 - *Assigning Date for Notification of the RSD Decision*), unless the Office determines that another date would be appropriate.
- Where alternative methods of notification are used, an appropriate date on which the Applicant can be deemed to have received the notification should be determined and recorded. The appeal period should run from the date of deemed notification.
- Appeal procedures should be **sufficiently flexible** to permit filing of Appeal Application Forms after the deadline in appropriate cases. As a general rule, the files of rejected Applicants should not be referred for file closure within the six weeks following the expiry of the appeal deadline (see § 9.1 - *Closing RSD Files*).
- Similarly, for appeals received after the RSD file has been closed, if it is not possible to establish that the Applicant was duly notified of the negative RSD decision, or the relevant appeal deadline, the file should be referred to procedures to re-open the RSD file, and the file should generally be re-opened for the purpose of examining the appeal application (see § 9.2 - *Re-opening RSD Files*).

7.3 Assigning Appeal Files

- Appeal applications should be determined by a qualified **Protection staff member who was not involved in the adjudication or review of the RSD claim in first instance**. The procedures and principles set out in § 4.1 - *Assigning Files for RSD Adjudication* are applicable to the assignment of files for determination of appeal applications.
- Wherever possible, the appeal should be decided by an Eligibility Officer or other Protection staff member who has equivalent or greater experience with RSD than the Eligibility Officer who decided the claim in first instance.
- Where staffing resources in a UNHCR Office do not permit assignment of an appeal file to a Protection staff member who was not involved in the adjudication or review of the claim in first instance, an appeal may be decided by another qualified staff member who has the necessary protection experience and training (i.e. the Deputy Representative or Representative). Where necessary, the UNHCR Office should consult with other UNHCR Offices in the Region, and the relevant Bureau in UNHCR Headquarters, to make appropriate staffing arrangements for determining the appeal. These arrangements should not preclude the possibility of an Appeal Interview where it is not appropriate to determine the appeal through a paper review. The criteria for determining whether an Appeal Interview should be granted are set out below in § 7.4.1 - *Assessing whether an Appeal Interview is Necessary*.

7.4 Procedures for Determining Appeal Applications

7.4.1 Assessing Whether an Appeal Interview is Necessary

- The purpose of the appeal procedures is to re-examine the first instance RSD decision to assess whether it was based on a **reasonable finding of fact and a correct application of the refugee criteria**.
- Eligibility Officers should begin the appeal determination by conducting a **thorough review of the RSD file**, including the RSD Interview transcript and RSD Assessment, the Appeal Application Form, and any other information provided by the Applicant in support of the appeal.
- As a general rule, Applicants should be given the opportunity to present their appeal in person. However, **determination of the appeal through a paper review** may be appropriate if, after a thorough examination of the file, the Eligibility Officer is satisfied that each of the following conditions exist:
 - All relevant evidence has been presented
 - The determination of the facts, including decisions to accept or reject particular evidence, is supported by the RSD Interview transcript and RSD Assessment
 - The RSD decision reached is based on a clearly correct or incorrect application of the refugee criteria to the accepted facts

An Appeal Interview should be granted in the following circumstances:

- The negative RSD decision was based on **credibility findings** that were not adequately addressed during the RSD Interview and supported in the RSD Assessment;
- Evidence that was relevant to the determination of the claim was presented by the Applicant but was **not adequately considered in the RSD Interview** and the RSD Assessment;
- **New evidence** is raised in the appeal application that is relevant to the determination of the refugee claim. The Appeal Interview should be granted to assess the reliability of the evidence;
- The Appeal Application Form and/or the RSD Interview transcript and RSD Assessment, or other reliable evidence, indicate that a **breach of procedural fairness** is likely to have occurred, which could have limited the ability of the Applicant to establish his/her claim, including:
 - Inadequate interpretation
 - The Applicant's discomfort regarding the conduct or profile (ethnic, religious, gender etc.) of the Eligibility Officer or interpreter
 - Denial of the opportunity to present relevant evidence
 - Real or perceived concerns regarding the confidentiality of the RSD procedure
 - Inappropriate questioning

- Where an Appeal Interview is required, the Eligibility Officer should refer the file for scheduling under established procedures. As a general rule, applications for appeal should be processed in the order that they were filed. Where compelling protection grounds exist, **appeal applications may be determined on a priority basis** pursuant to the procedures set out in § 4.6 - *Accelerated RSD Processing*.
- Whether an appeal application is determined on the basis of a paper review or an Appeal Interview, UNHCR Offices should adopt appeal procedures to ensure that **appeal applications are processed in a fair, prompt and transparent manner**.

7.4.2 Conducting the Appeal Interview

- The Eligibility Officer should open the Appeal Interview by briefly reviewing the introductory points set out in § 4.3.5 - *Opening the RSD Interview*.

The Eligibility Officer should explain the following procedural issues relating to the appeal process:

- The Appeal Interview is being conducted because the Applicant has requested a review of the RSD decision;
- The purpose of the Appeal Interview is to examine the issues or concerns presented by the Applicant in the Appeal Application Form and to clarify other issues that are relevant to the determination of the refugee claim. The Appeal Interview will not re-examine all of the evidence that is relevant to the claim;
- If the appeal is denied, the Applicant's file with UNHCR will be closed.



- Before commencing the Appeal Interview, the Eligibility Officer should ensure that the Applicant understands the **general reasons why the refugee claim was rejected** in first instance.
- As a general rule, the Eligibility Officer should focus the Appeal Interview on issues that relate to the grounds for granting the Appeal Interview and on the specific information or concerns presented by the Applicant in the Appeal Application Form. The Eligibility Officer should not conduct a full RSD Interview unless this is necessary to decide the appeal. Evidence that was accepted in the RSD Assessment should not generally be re-examined in the Appeal Interview.
- The Eligibility Officer who conducts the Appeal Interview should maintain a detailed **Appeal Interview transcript**. The principles set out in § 4.3.8 - *Recording the RSD Interview* are relevant to the appeal procedures.

7.4.3 The Appeal Assessment

- The reasons for the determination of the appeal should be documented in an **Appeal Assessment Form**, which should be signed by the Eligibility Officer who decided the appeal.

7.4.4 Review of Appeal Decisions

- As a best practice, every Appeal Assessment should be reviewed by a UNHCR Protection staff member other than the Officers who decided the claim in first instance and on appeal. Where it is not feasible to review all Appeal Assessments, it is strongly recommended that every Appeal Assessment that overturns the first instance RSD decision be reviewed.

7.5 Notification of Appeal Decisions

- UNHCR Offices should establish timelines for the issuance of appeal decisions. Appeal procedures should promote fair and **prompt review and determination** of all appeals.
- Applicants should be **notified in writing** of the decision on their appeal. As a general rule, it is **not necessary to provide reasons for the appeal decision**. However, where detailed reasons for rejection were not provided to the Applicant upon notification of the RSD decision in first instance, Applicants who request it should have the possibility to know the reasons why their claim was rejected, either in writing or through counselling with a qualified UNHCR staff member.
- The files of Applicants who are rejected on appeal should be referred to procedures for closure of the file (see § 9.1 - *Closing RSD Files*).