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Still Human Still Here

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A ? of credibility:

Why so many initial asylum decisions are overturned on appeal in the UK

Amnesty International

stillhuman stillhere
The campaign to end destitution of refused asylum seekers

Acknowledgement

A question of credibility:
Why so many initial asylum decisions are overturned on appeal in the UK

Researched by Elizabeth Williams and Natasha Tsangarides
Written and edited by Jan Shaw and Mike Kaye

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The campaign to end destitution of refused asylum seekers

Amnesty International UK is a national section of a global movement of over three million supporters, members and activists. We represent more than 230,000 supporters in the UK. Collectively, our vision is of a world in which every person enjoys all of the human rights enshrined in the Universal Declaration of Human Rights and other international human rights instruments. Our mission is to undertake research and action focused on preventing and ending grave abuses of these rights. We are independent of any government, political ideology, economic interest or religion.

Still Human, Still Here is a coalition of 58 organisations which are campaigning to end the destitution of refused asylum seekers in the UK.

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Executive Summary

In 2004, Amnesty International's report *Get It Right: How Home Office decision making fails refugees* found that one in five decisions to refuse asylum was overturned on appeal. For the last three years statistics show that more than 25 per cent of initial decisions to refuse asylum are being overturned on appeal.

During 2012, Amnesty International and the Still Human Still Here coalition carried out research to examine why this is the case. We examined the refusal letters and appeal determinations of 50 cases from Syria, Sri Lanka, Iran and Zimbabwe, all of which have had high appeal overturn rates of the initial decision to refuse asylum in the last two years. In 2012, 52 per cent of appeals were allowed for Syrians, 41 per cent for Sri Lankans, 34 per cent for Iranians and 25 per cent for Zimbabweans.

In 42 of the 50 randomly selected cases we analysed (84 per cent of the research sample), the Immigration Judge indicated that the primary reason for an initial decision being overturned was that the UKBA case owner had wrongly made a negative assessment of the applicant's credibility. In all these cases, the case owners had not properly followed the UKBA's own polices on assessing credibility.

Four errors in applying the credibility assessment are responsible for 88 per cent of these flawed decisions. These mistakes relate to:

- the use of speculative arguments or unreasonable plausibility findings;
- not properly considering the available evidence;
- using a small number of inconsistencies to dismiss the application;
- and not making proper use of country of origin information.

In reviewing the appeal decisions, it was also possible to identify a number of secondary reasons which the Immigration Judge indicated were also factors in the original decision being overturned, and the vast majority of these also related to poor credibility assessments.

The four errors in applying the credibility assessment which are identified above as being the primary reason for 88 per cent of the flawed decisions being overturned, also account for 59 per cent of the secondary reasons noted in the appeal determinations.

In addition, case owners in the research sample also made mistakes in relation to mitigating circumstances and the application of Section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004. Errors in applying these two aspects of the credibility assessment were identified as being the primary reason for 10 per cent of flawed decision being overturned, and also account for 29 per cent of the secondary reasons noted in the appeal determinations.

It is apparent from this analysis that six aspects of the credibility assessment are repeatedly not being applied correctly by some case owners, and the failure to follow the Home Office's guidance in this respect was the primary reason why the appeal was allowed in more than 80 per cent of all the cases examined.

During the analysis of the cases, a 'domino effect' was observed by which case owners focussed on one part of the case that they thought inconsistent or implausible and then used this as the basis for undermining other aspects of the individual's account. The following example from a Sri Lankan refusal letter clearly illustrates this:

Sri Lanka 9 refusal letter:

"As it has not been accepted that you were a member of the LTTE, it is not accepted that you were arrested…"

"As it has not been accepted you were arrested, it is not accepted that you were detained or received the treatment you claim to.…"

"Given that it has not been accepted that you were arrested or detained, it is not accepted you were released..."

"Given that it has not been accepted that you were arrested and released it is not accepted your father was arrested and questioned…"

In another case involving a Syrian asylum seeker, the case owner makes a flawed credibility assessment which is then overturned by the Immigration Judge.

Syria 4 refusal letter:

"You answered that 'Turkey, Saudi Arabia and Qatar' opposed a resolution by Arab and European nations in the United Nations Security Council for Syria's President to resign. Given that you claim to have been protesting in February 2012, it is not considered credible that you fail to answer basic questions regarding international politics correctly. It is not accepted that you have undertaken any role in political activities."

Syria 4 Immigration Judge:

"If as claimed he has never had any education and has lived in a rural area without the benefit of electricity, it is just plausible that his information about his home country, as regards matters and events not within his immediate area, would be limited."

Recommendations

While the Home Office has introduced a number of positive initiatives in recent years to improve decision making procedures, more than one in every four initial decisions to refuse asylum continues to be overturned on appeal. Getting the decision wrong in the first instance causes a great deal of anxiety for the asylum seeker concerned and prolongs the period in which they are left in limbo. More accurate initial decisions would speed up the asylum process, resulting in significant savings for the Government through reduced administrative and support costs. In view of the above, we urge the Government to implement the following recommendations:

1. The Home Office must monitor the performance of individual case owners and their managers and address high overturn rates on appeal and consistent failure to properly apply policy guidance through appropriate support and training. If poor quality decisions persist then case owners and/or their managers must be removed from these roles.

2. More flexibility should be built into the asylum process to allow relevant materials (including medical evidence, country information and the translations of documents) to be properly considered both prior to and after the substantive interview, particularly if the applicant is unrepresented. Case owners should have discretion to delay a decision or an interview in order to obtain relevant evidence.

3. Decision makers should be required to give applicants an opportunity to explain apparent contradictions in their statements or inconsistencies with objective country of origin information.

4. The Home Office should encourage greater communication between the case owner, the applicant and their legal representative prior to interview, the initial decision and any appeal to try and resolve matters in dispute or to seek clarification around issues of concern (e.g. perceived inconsistencies or implausible behaviour). This could be facilitated by:

    - Ensuring that case owners, applicants and legal representatives have access to full contact details of the other parties, including email addresses and direct phone numbers;
    - Case owners contacting legal representatives or the applicants, using the invitation to interview letter, to indicate what information they would like before or at the asylum interview;
    - Case owners contacting legal representatives or the applicants after the interview to raise any further issues arising from the interview so that these can be addressed prior to making the initial decision.

5. Policy alerts on fast changing country situations should be issued and case owners should always check whether a new Operational Guidance Note (OGN), Country of Origin Information Service report or country guidance case has been issued prior to the appeal.

6. Cases with indefensible reasons for refusal should be withdrawn prior to the appeal.

7. Case owners should defend their own decisions at appeal. If Home Office Presenting Officers rather than case owners continue to represent at appeal, then an efficient feedback loop is needed so that case owners can properly learn from their mistakes.

8. Section 8 should be repealed as it gives inappropriate weight to certain actions as damaging to an applicant's credibility. In the short term, current guidance should be amended to provide a wide variety of examples which would be regarded as providing a reasonable explanation for a delay in making an asylum application.

9. Joint training programmes, which include UNHCR and other stakeholders, should be established for case owners to address the problems identified in this research and in particular to deliver:

    - Improved interviewing technique, including making better use of follow-up questions and how to probe material facts;
    - A better understanding of how cultural or personal issues will inhibit or shape an individual's actions in certain circumstances; why people may delay making an asylum application; and how trauma affects memory and recall, (e.g. through interactive learning and role playing exercises);
    - Specialist training for senior case workers, the Quality Audit Team and those providing training so that they are better placed to identify and support staff who are having difficulties with credibility assessments.

10. Access to free expert legal advice and representation should be guaranteed to all asylum seekers prior to their initial interview and throughout the asylum process so that resources are focused on good quality, defensible decisions early in the decision making process.

1. Introduction

In 2004, Amnesty International published its report *Get It Right: How Home Office decision making fails refugees*. This study found that one in five decisions to refuse asylum was overturned on appeal. Almost a decade later, despite improvements in the quality of initial decision making, the number of allowed appeals has increased, with more than 25 per cent of decisions to refuse asylum being overturned on appeal in 2010, 2011 and 2012.

For this study we have focused on Syria, Sri Lanka, Iran and Zimbabwe, all of which had high overturn rates on appeal of the initial decision to refuse asylum in 2011 and 2012. In 2012, 52 per cent of appeals were allowed for Syrians, 41 per cent for Sri Lankans, 34 per cent for Iranians and 25 per cent for Zimbabweans. This amounts to a combined total of 901 overturned initial decisions.

Amnesty International's 2004 report discussed the negative culture whereby unreasonable decisions were made about an individual's credibility. The organisation was concerned about the frequency with which caseworkers made unreasoned and unjustifiable assertions about asylum applicants which cast doubt on whether their account of why they needed protection in the UK could be believed.

Since 2004, the UK office of the United Nations High Commissioner for Refugees (UNHCR) has been working with the Home Office to achieve an improvement in the overall quality of first instance decision making through the Quality Initiative (QI) project which submitted six reports to Ministers between 2005 and 2009, setting out a range of recommendations.[1]

A finding that runs through almost all of UNHCR's QI reports is that case owners take an incorrect approach to assessing an asylum seeker's credibility and establishing the facts of the claim. QI reports found that, amongst other deficiencies, there was a failure to give the applicant the benefit of the doubt when their account appeared credible, speculative argument was frequently used, a single untrue statement was relied on to dismiss the credibility of the entire claim, and there was a failure to follow UK case law.

This report highlights similar concerns to those outlined by UNHCR. In the vast majority of cases examined for this research, the refusal letter breached the credibility guidance as set out by the Home Office's UK Border Agency (UKBA).[2]

Getting the decision wrong in the first instance causes a great deal of anxiety for the asylum seeker concerned and prolongs the period in which they are left in limbo. More accurate initial decisions would speed up the asylum process, resulting in significant savings for the Government through reduced administrative and support costs.

We hope this research will contribute to an improved asylum determination procedure in which more initial asylum decisions are right first time.

1 In January 2010, UNHCR signed a new MOU with UKBA and the Quality Initiative project became the Quality Integration Project.

2 On 26 March 2013, the Home Secretary announced that the Executive Agency status of the UK Border Agency will end and its functions will be brought back within the Home Office. The Government has split up the UK Border Agency and in its place will be an immigration and visa service and an immigration law enforcement organisation. We have referred to UKBA throughout the report as this was the title of the agency during the period in which the research was conducted.

2. Methodology

While UKBA has introduced a number of positive initiatives in recent years to improve its policy documents and its decision making procedures, more than one in every four first instance decisions to refuse asylum continue to be overturned on appeal. In 2012, there were 2,192 cases where the initial asylum decisions were successfully appealed (27 per cent of all appeals).

In order to try and understand why this is the case, we reviewed 50 cases in which the initial refusal by UKBA was overturned on appeal, with a particular focus on whether policy guidance and procedures were being properly implemented in practice.

2.1 Selection of cases

We decided to focus the research on specific nationalities which had a particularly high number of allowed appeals during 2011. We originally planned to limit the research to successful appeals from Sri Lankan, Iranian and Zimbabwean asylum seekers, as these nationalities all succeeded in 30 per cent or more of their appeals and had the biggest number of allowed appeals in 2011, with a combined total of 1,048.

However, as the number of Zimbabweans submitting appeals dropped dramatically in 2012, we decided to include a fourth nationality. We selected Syria as 39 per cent of Syrian appeals were successful in 2011 and asylum applications from this country significantly increased over the last year.

Focussing on cases from four nationalities meant that we could pay close attention to how case owners use country of origin information and the country specific asylum policy guidance (referred to as Operational Guidance Notes or OGNs), and look for emerging patterns across countries which could explain why such a high percentage of initial decisions are overturned on appeal.

Access to these cases was facilitated through the cooperation of the UK Border Agency. UKBA randomly selected cases from their database and provided anonymised copies of the reasons for refusal letter and the appeal determination for each case.

All of the cases had to have received an initial refusal letter after February 2012, as this was when new credibility guidance[3] was issued and we wanted to assess whether these revised instructions had an impact on the quality of the initial determinations.

Consequently, all of the initial asylum decisions for the 50 cases were made between 14 March and 21 June 2012. Initial decisions were taken in 10 different locations across the UK, but the vast majority (88 per cent) were taken in Greater London, Leeds, Liverpool or Oxfordshire.

3 See the Asylum Process Guidance, Considering the protection (asylum) claim and assessing credibility at: ww.ukba.homeoffice.gov.uk

The appeals were heard between 10 May and 16 August 2012. Appeals were heard in a total of 10 different locations across the UK, but 41 were heard in just three locations, Taylor House, Hatton Cross and Bradford. The average time between an initial decision and the appeal was 57 days and the average time between an appeal being heard and the promulgation of the decision was 11 days.

Of the 50 cases we received which fitted the criteria, 20 were Iranian, 15 were Sri Lankan, 11 were Syrian and four were Zimbabwean. The gender breakdown was 34 men and 16 women (eight Iranians, four Sri Lankans and four Zimbabweans).

2.2 How information was analysed

The research team analysed the reasons for refusal letters and the appeal determinations to identify on what grounds the Immigration Judge had allowed the appeal. The research team sought to determine the primary reason why the appeal succeeded as well as secondary reasons why the Immigration Judge had overturned the initial decision.

Based on the Immigration Judge's conclusions, the research team sought to distinguish between appeals which were allowed because the initial decision was flawed and those where UKBA's decision was reasonable, but the Immigration Judge reached a different conclusion.

An initial decision was generally considered flawed when the Immigration Judge disagreed with one or more issues in the refusal letter in which the case owner had not followed UKBA's own procedural or policy guidance on asylum determinations (e.g. the decision wrongly applied caselaw or did not properly follow the credibility guidance or the relevant OGN).

An initial decision was generally considered reasonable when it was well argued and followed existing policy guidance, but new information came to light after the initial decision was taken (e.g. documentary evidence or an updated OGN) or the Immigration Judge simply took a different view in respect to one or more of the case owners' conclusions.

2.3 Research limitations

There are several difficulties involved in trying to identify the primary and secondary reasons why an Immigration Judge overturned an initial decision, not least of which is the fact that determinations vary greatly in length and detail, and some do not give a clear indication of the relative weight attached to different issues by the Judge when allowing the appeal.

There is therefore an unavoidable degree of subjectivity in separating out what is the primary reason for a decision being overturned and what are secondary reasons. In addition, many of the reasons for an appeal being successful are interrelated. This is particularly true in respect of the overlapping categories dealing with errors in the credibility assessment.

In recognition of these challenges, the research team reviewed both random and difficult cases together to ensure that all the cases were analysed and categorised in a consistent way. In a small number of cases, the research team noted flaws in the initial decision alongside the provision of new evidence at the appeal as a joint primary reason for an appeal being allowed. In these cases the decision was still described as flawed when the Immigration Judge identified aspects of the initial decision which did not follow existing UKBA policy or procedures.

As outlined above, the case analysis focuses on the conclusions reached by the Immigration Judges rather than the research team's own assessment of the reasons for refusal letters. However, in Section 3.3 we have separately analysed other errors in the decision making process from the reasons for refusal letters which were identified by the researchers, but not necessarily referred to by the Immigration Judge. This is a valuable exercise because when issuing an appeal determination the Immigration Judge is looking at the case as a whole and will often only refer to a limited number of key issues rather than review every point made by the case owner with which they disagree.

It is also unclear how many of the applicants had access to legal advice and representation before the initial decision was made. From the sample it is clear that 18 applicants had legal representation at the initial decision and in all 50 cases the applicants were legally represented at appeal.

The final limitation to the research worth highlighting is related to the fact that only the reason for refusal letter and appeal determination were analysed rather than the whole case file. This means researchers did not see the interview records and therefore cannot assess in detail whether the case owner properly elicited and clarified information provided, probed material facts and gave the applicant an opportunity to explain any discrepancies, perceived inconsistencies or the absence of documentary evidence.

Despite the recognised limitations of the research, the findings outlined below provide clear evidence and valuable insights into why such a significant number of initial decisions are overturned on appeal.

3. Research findings

3.1 Good quality initial decisions

In eight cases (16 per cent of the sample) the research indicated that the UKBA case owner had made a well-reasoned and good quality initial decision with which the Immigration Judge disagreed (these cases relate to four Syrians, two Iranians, one Sri Lankan and one Zimbabwean).

In the Syrian decisions, the Immigration Judges overturned the initial refusals for a number of reasons including new evidence coming to light and changes in the country and security situation. All the cases in the sample were initially decided prior to the publication of the Operational Guidance Note on Syria in July 2012 which was updated in January 2013.

The earlier OGN did not contain in the "Main categories of claim", guidance on claims relating to "Forced Military Conscription". In the sample, there were four individuals who were claiming asylum partly on the basis of military draft evasion/forced recruitment.

In one of the Iranian cases the principle reason for the overturn was that new evidence came to light at the appeal. In the other case, it was considered that the initial decision was a reasonable one with which the Immigration Judge disagreed. This was also true for the Sri Lankan case.

The Zimbabwean case was a good decision when it was made, but the assessment of risk changed as a new country guidance case was issued.[4]

In these cases the UKBA case owner made a well-reasoned decision. The rest of the report focuses on the other cases in which the research indicates that the case owners did not properly follow existing UKBA credibility guidance and the appeal could have been avoided.

3.2 Flawed decisions: Primary and secondary reasons for the initial decision being overturned

In 42 cases (84 per cent of the sample), the Immigration Judge indicated that the primary reason for an initial decision being overturned was that the UKBA case owner had wrongly made a negative assessment of the applicant's credibility. In all these cases, the case owners had not properly followed the UKBA's own polices on assessing credibility.

In nine of these cases (five Iranians, three Sri Lankans and one Zimbabwean), new evidence was also submitted at appeal which was considered a joint primary reason for the decision being overturned. However, it should be stressed that even without this new evidence, the appeal would have been likely to succeed because the initial decision was flawed. The new evidence which was submitted included medico-legal reports, expert evidence or witness testimony, and new country of origin information (COI).

4 The EM Country Guidance case was quashed and previous CG RN applied.

Case owners made a total of seven different mistakes when assessing credibility which were identified as primary reasons for the initial decision being overturned (as set out in Table 1 below).

However, four errors in applying the credibility assessment are responsible for 88 per cent of these flawed decisions.

These mistakes relate to:

- the use of speculative arguments or unreasonable plausibility findings;
- not properly considering the available evidence;
- using a small number of inconsistencies to dismiss the application;
- and not making proper use of country of origin information.

Table 1: Main reasons	Total	Iran	Sri Lanka	Syria	Zimbabwe
Speculation or unreasonable plausibility findings	12	5	5	2	0
Did not consider available evidence	11	5	3	1	2
Small inconsistencies	9	6	3	0	0
Did not use COI or used COI selectively	5	0	2	2	1
Mitigating circumstances	3	0	1	2	0
Section 8	1	1	0	0	0
Minor credibility issues not relevant to claim	1	1	0	0	0
TOTAL:	42	18	14	7	3

In reviewing the appeal decisions, it was also possible to identify a number of secondary reasons which the Immigration Judge indicated were also factors in the original decision being overturned (as set out in Table II).

The table shows, with the exception of 11 instances where new evidence was provided and considered a joint reason for the appeal being overturned (five Iranians, five Sri Lankans and one Syrian), all of the secondary reasons identified are also linked to mistakes in the credibility assessment.[5]

The four errors in applying the credibility assessment which were identified above as being the primary reason for 88 per cent of the flawed decisions being overturned, also account for 59 per cent of the secondary reasons noted in the appeal determinations.

Table II: Secondary reasons	Total	Iran	Sri Lanka	Syria	Zimbabwe
Section 8	15	6	6	2	1
Did not consider available evidence	13	5	3	4	1
Did not use COI or used COI selectively	13	4	6	2	1
Small inconsistencies	11	5	5	1	0
Speculation or unreasonable plausibility findings	10	7	2	1	0
Mitigating circumstances	8	0	7	1	0
Absence of COI or documentary evidence	5	3	1	1	0
Adverse findings despite COI	3	0	1	2	0
Credibility undermined despite correct answers	1	0	0	1	0
TOTAL:	79	30	31	15	3

5 A total of 84 secondary issues were identified. This is greater than the 42 appeals considered as multiple secondary reasons were recorded for some cases.

In addition to these four issues, case owners in this sample also appear to consistently make mistakes in relation to the application of Section 8[6] and mitigating circumstances. Errors in applying these two aspects of the credibility assessment were identified as being the primary reason for 10 per cent of flawed decision being overturned, and also account for 29 per cent of the secondary reasons noted in the appeal determinations.

It is therefore clear from this analysis that six aspects of the credibility assessment are repeatedly not being applied correctly by some UKBA case owners, and the failure to follow the Home Office's guidance in this respect was the primary reason why the appeal was allowed in more than 80 per cent of all the cases examined.

It should also be stressed that a Home Office Presenting Officer's (HOPO) presence at appeal does not reduce the overturn rate when the initial decision is flawed. The evidence from this research shows that HOPOs were present to argue the Home Office's case in 78 per cent of the appeals. HOPOs were not present at the appeals of four Sri Lankans, three Iranians, two Zimbabweans and two Syrians.

In the sections below we review each of the six areas in which errors were particularly evident in the credibility assessment with quotes from relevant cases from the research. References are made, as appropriate, to the reasons for refusal letter from UKBA, the relevant Home Office credibility guidance and the conclusions reached by the Immigration Judge in overturning the initial decision. The cases cited include both primary and secondary reasons for the appeal being overturned by the Immigration Judge.

Speculation or unreasonable plausibility findings

In 12 of the cases, the primary reason why the Immigration Judge overturned the initial decision was because it relied on speculation or unreasonable plausibility findings based on the case owner's judgement of what was likely to happen or how the applicant should have acted rather than objective information. The use of speculation or unreasonable plausibility findings were identified as secondary reasons for an initial determination being overturned in 10 other cases.

6 Section 8 of the 2004 Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 requires decision makers to "take into account as damaging to the applicant's credibility any behaviour they think is designed or likely to conceal information, mislead, or obstruct or delay a decision. However, the legislation makes clear that case owners should take into account any reasonable explanation given by the asylum seeker for the delay in making the application.

UKBA's Asylum Process Guidance, *Considering the protection (asylum) claim and assessing credibility*[7] (hereafter referred to as Credibility Guidance), states that when decision makers are giving consideration to whether a particular material claimed fact should be accepted as plausible, "it is not enough to simply say that the event could not have happened" (para. 4.3.6) and that the decision maker "should never use speculation to reject a material fact" (para. 4.3.5).

The Credibility Guidance also says that "Decision makers must never make adverse credibility findings by constructing their own theory of how a particular event may have unfolded, or how they think the applicant, or a third party, ought to have behaved" (para. 4.3.6). It also warns against making "unfounded assumptions based not on objective information but on the individual decision maker's own experiences and beliefs" (para. 4.3.5).

However, in a significant number of cases this guidance was not followed. This is highlighted below with reference to UKBA's refusal letters and the Immigration Judges' conclusions at the appeal.

Sri Lanka 1 refusal letter:
"It is not accepted that X would mention your name to save himself as he had been arrested before and could have been traced back on the system as an LTTE member. There is no reason as to why confessing that you are an LTTE member would help in any way. This aspect of your claim is rejected".

Sri Lanka 1 Immigration Judge:
"…the whole purpose of authorities ill-treating detainees is to make them confess…"

Iran 5 refusal letter:
"…you claim that the person who assisted you throughout the airport was able to obtain your passport from the authorities. This is not considered plausible given the level of security in the airport and the serious danger they would place themselves in if they were caught carrying out this act."

Iran 5 Immigration Judge:
"The appellant's account that her release and exit were procured through the payment of a bribe is consistent with some of the objective material that was before me. The appellant has clearly said that she was assisted in her exit through the airport by a Mr X who was known to a member of her family."

7 See the Asylum Process Guidance, Considering the protection (asylum) claim and assessing credibility at: www.ukba.homesoffice.gov.uk

Sri Lanka 11 refusal letter:
"…you claim you helped injured fighters travel to India…you did not know what injuries they were. You also did not know where they were going for medical treatment. The fact that you did not know such basic information about the people who you provided so much assistance to whilst they were in Colombo casts doubt on the credibility of your claim."

Sri Lanka 11 Immigration Judge:
"I find nothing remotely incredible in his ignorance of these matters….It is clear the LTTE operates on a need-to-know basis. The appellant, quite naturally, was only given the information he needed in order for him to bring the LTTE members to India. There would be no reason for him to know anything about the injuries."

Iran 16 refusal letter:
"It is noted that you would have been 16 years old at the time of your father's death, therefore it is not accepted that this factor would prevent you from knowing more about your father's activities."

Iran 16 Immigration Judge:
"The appellant would have been about 16 years old when his father died and I find it entirely credible that at that age he may not have been told about the extent of his father's activities. …it is not uncommon for children to follow their parent's political allegiances with little or no understanding of the political parties [sic] manifesto or history."

Sri Lanka 12 refusal letter:
"It is not accepted that a proscribed and illegal terrorist organisation, one which would of needed to rely upon secrecy in order to conduct its affairs in government controlled areas, would have brazenly walked up to complete strangers in order to ask them to join their terrorist organisation. It is therefore not accepted that you were contacted by the LTTE as claimed."

Sri Lanka 12 Immigration Judge:
"…as he explains, the majority of the population in those areas were Tamil; there was nothing unusual about people talking to each other in the street; and LTTE members would not have been immediately identifiable. I find his explanation to be plausible".

Not properly considering the available evidence

In 11 cases from the sample, the primary reason the Immigration Judge overturned the initial decision was because the decision maker did not properly consider the available documentary or medical evidence or did not attach appropriate weight to the evidence provided by the applicant. A failure to properly consider available evidence was identified as a secondary reason for an initial determination being overturned in a further 13 cases.

In all four Zimbabwean cases the applicants submitted documentary evidence in advance of the initial decision. As far as can be ascertained from the refusal letter and appeal determination this was also the case in 14 of the Iranian cases and seven of the Syrian cases. In eight of the Sri Lankan cases, evidence was submitted to corroborate the claim of torture or to demonstrate the effects of torture prior to the initial decision.

When assessing documentary evidence, paragraph 4.3.7 of the Credibility Guidance notes that documentation submitted as evidence should not be considered in isolation from other pieces of evidence that go towards establishing a particular fact. It also states that "It is not appropriate or sustainable for a decision maker to attach no weight to a document submitted in support of a claim without giving clear reasons for reaching this finding based on the available evidence."

In relation to survivors of torture, paragraph 4.3.8 of the Credibility Guidance also states that reports by professionally qualified clinicians (including GPs) which support a claim to have been tortured, should be given appropriate weight in the decision. However, in several cases the Credibility Guidance cited above was not properly followed. In one case (Sri Lanka 13, quoted below), the applicant submitted eight photographs, an NHS letter and an appointment card prior to the initial decision, but no weight was given to this evidence in the decision.

Sri Lanka 13 refusal letter:

"You claim to have been beaten, burnt with cigarettes and rods as well as being raped."

"Whilst some of the photographs appear to show scars, there is no way of establishing on whom the scars were present on, when the photographs were taken and where on the body the scars are evident. As such the photographs have not been accepted as showing scarring which you sustained as claimed".

Sri Lanka 13 Immigration Judge:

"The injuries appear to be supported by the account she gives in a lengthy asylum interview."

"She (the Secretary of State) failed to consider the other pieces of evidence put before her. For instance the appellant provided the respondent with evidence of cigarette burns on her body. These do not appear to have been considered…"

Sri Lanka 5 refusal letter:
"You have produced photographs of scarring. However, it is not believed that they were consistent with your story of events."

Sri Lanka 5 Immigration Judge:
"I found the photographs quite shocking…I found the extent of the Appellant's scarring highly significant."

Zimbabwe 3 refusal letter:
"… you have submitted two articles which you have written and which have been published in the Zimbabwean newspaper. It is noted that these activities are not dissimilar to those carried out by thousands of Zimbabwean protestors around the world. Furthermore you have adduced no credible evidence that the Zimbabwean authorities are specifically aware of your activities."

Zimbabwe 3 Immigration Judge:
"I accept that the appellant has had two articles published in the Zimbabwean newspaper. The articles were published in the editions of May and June 2011. There is a photograph of the appellant which accompanies the articles and is published in the newspaper as is her name and she is described as an activist in London. …I accept that the articles are written in opposition to the Mugabe regime."

Iran 20 refusal letter:
"A representative had viewed the video footage and considered that the recordings were of low quality and it was impossible to determine with absolute certainty that it was the appellant in the films."

Iran 20 Immigration Judge:
"The Respondent submitted that one colleague had viewed the films and considered the appellant was recognisable whilst another did not. I explained to both parties that I considered the appellant to be clearly recognisable on all the films."

Iran 10 refusal letter:
"You have produced photographs, a CD with clips, your pass card, two translated emails and your electronic flight itinerary in support of your claim. The photograph, CD and emails have been carefully considered but have not been found to assist your credibility."

Iran 10 Immigration Judge:
"The appellant's evidence is also strongly supported by the documentary evidence she has been able to produce. The respondent discounted that evidence on the basis that she found her account implausible but that is not the proper way to apply the principles in the case of Tanveer Ahmed. The case says that you must look at the evidence as a whole."

Syria 6 refusal letter:
"Furthermore, the pictures you have provided do not identify you in any way which would alert you to the authorities. Therefore it is not accepted that your *sur place* activities will put you at risk".

Syria 6 Immigration Judge:
"There is evidence of him being photographed and there is Youtube footage which is widely and publicly available… His persistent presence will undoubtedly have caused the Syrian authorities to be more aware of him and I have no doubt that he has been photographed by those same intelligence authorities."

Sri Lanka 10 refusal letter:
"It is not considered that merely being taught to take cover at the blow of a whistle could be reasonably classed as "rigorous military training", as the LTTE's training was described by the BBC."

Sri Lanka 10 Immigration Judge:
"I am satisfied that the appellant's evidence was wholly consistent with the BBC reported information because the appellant explains at q47 onwards, he was indoctrinated… He also states at q53 and 54 that he received physical training such as 'Running, crawling, go underneath the barbed wire, parade training…' There is no explanation why the respondent has avoided reference to above-mentioned evidence provided by the appellant".

Syria 10 refusal letter:
"You state that X visited you on the 9th or 10th of June…. It is noted that you returned to the UK on 19/6/12. If you had to attend the military recruitment office by the 16th or 17th of June (within the week period that you had been permitted), it indicates that you left Syria at a time after you were due to attend the military recruitment office."

Syria 10 Immigration Judge:
"This information contains an error of fact, whether by way of a typing mistake or other. The evidence is that the appellant left Syria and returned to the United Kingdom on 16th June 2011 and not on the 19th of June 2011, as stated by the respondent in the refusal letter. … he left Syria barely a week after the order was given to the military recruitment office."

Using a small number of inconsistencies to dismiss the application

In nine of the cases reviewed the primary reason the Immigration Judge overturned the initial decision was because the decision maker relied on small inconsistencies to dismiss the applicant's credibility. Using a small number of inconsistencies to dismiss the application was also identified as a secondary reason for an initial determination being overturned in a further 11 cases.

Paragraph 4.3.1 of the Credibility Guidance notes that while an applicant's inability to remain consistent throughout both written and oral accounts of past and current events may lead the decision maker not to believe the claim, it is important that wherever possible, "any inconsistencies in the claim are put to the applicant during the interview so they have an opportunity to explain."

The research shows that minor inconsistencies or a perceived discrepancy are frequently used to dismiss the credibility of the application, as illustrated by the following examples from the research sample.

Sri Lanka 7 refusal letter:
"It is considered inconsistent that in your screening interview you claimed that you surrendered at Vattuvakkal, then detained at Mullaitivu and then transferred to Omanathy, whereas in your asylum interview you claimed to have first surrendered at Mullaitivu. Your inability to remain consistent about where you were when you surrendered casts doubt on the veracity of your claim."

Sri Lanka 7 Immigration Judge:
"The Appellant gave a reasonable explanation for the apparent inconsistency…stating that Vattuvakkal lies within Mullaitivu district."

Iran 16 refusal letter:
"It is considered that the level of knowledge you have demonstrated does not reflect that of someone who had ardently supported the monarchy for around 12/13 years and whose father was also a monarchist."

Iran 16 Immigration Judge:
"The officer was not satisfied that he had told the truth because he was not able to answer all the historical questions correctly, but he did correctly identify the Prince's date of birth and where he lives, that he is a combat pilot, and has a degree in political science had a photography hobby, that he does not advocate violence and that his books had been banned in Iran. …I do not consider the interview gave the appellant sufficient opportunity to demonstrate his knowledge over five short and narrow questions."

Sri Lanka 14 refusal letter:

"You have raised your alleged forced recruitment in 2007 to the LTTE was premised on the LTTE's 'one family, one fighter' policy. It is noted that your claim that your brother was already enlisted by the LTTE is not externally consistent with your alleged forced recruitment based on its understood methods."

Sri Lanka 14 Immigration Judge:

The Judge found that the Appellant provided credible and detailed information on the role he played in helping the LTTE, his detention and his subsequent treatment in detention and stated: "I therefore accept that the Appellant has given a credible response for the fact that despite the one family one fighter policy he was asked to join the LTTE regardless of the fact that his brother was also a member."

Not making proper use of country of origin information (COI)

In five cases the primary reason the Immigration Judge overturned the initial decision was because the decision did not make proper use of country of origin information (COI) in reaching a credibility finding or used COI selectively to undermine credibility. This was also identified as a secondary reason for an initial determination being overturned in 13 other cases.

Paragraph 4.3.3 of the Credibility Guidance highlights the importance of considering "all the available evidence, avoiding selective or inappropriate use of COI, to reach an informed and well reasoned decision." It stresses also that COI "should not be used selectively and decision makers must not draw adverse inferences from it."

Despite this guidance, in the case of Sri Lanka 13 the Immigration Judge criticises the Home Office for not looking at all the evidence in the round and states: "Blind adherence to selective background information and picking up odd sentences from starred determinations does not discharge the Secretary of State for the Home Dept. The respondent does not say that the TAP (Temporary Airport Permit) is false because of any objective investigation of that document itself but because the background information and starred decision leads her to do so. This is hardly a case sensitive approach."

In another case (Iran 5), the case owner used country of origin information selectively to dismiss the applicant's claim that she was briefly detained for seven to eight hours and then released because her father paid a bribe. The case owner referred to the poor detention conditions for political prisoners to argue that it was not plausible that she would only have been slapped while in detention, and also that she would have been released after a bribe had been paid. Similar problems are noted in other cases from the research sample.

Zimbabwe 4 refusal letter:
"Furthermore according to the country information, it is noted that there is a Border Gezi camp and a camp in Mushagashe. You stated that you went to the Border Gezi camp in Mushagashe. It is considered that if the youths who allegedly kidnapped you, took you to a camp it would be either the Border Gezi camp or the Mushagashe camp. Your account of being taken to the Border Gezi camp in Mushagashe is not consistent with the country information. Therefore it is not accepted that you were kidnapped and taken to a camp."

Zimbabwe 4 Immigration Judge:
"The appellant has explained that she was taken to the camp at Mushagashe and the Secretary of State has misinterpreted what she had to say on this subject. The fact that the Border Gezi is the name of the organisation running such a camp is confirmed by the background material."

Sri Lanka 15 refusal letter:
"You stated that you were forced to join the LTTE, but you later stated that it was important to be part of the LTTE so that everyone could return to Jaffna, by fighting the army….Given your explanation of how you joined the LTTE, it is not accepted that you were forced to join the LTTE."

"You claim that when you went back to Sri Lanka, you were taken by the Army and you were beaten, tortured and sexually assaulted…Consequently, given the inconsistencies evident in your claim it is not even accepted that you were taken by the Sri Lankan army or even received such torture."

Sri Lanka 15 Immigration Judge:
"The appellant's evidence has been generally consistent…She has given a detailed account of the way she used to collect, store and transmit medical supplies which dovetails with the phases of the conflict in Sri Lanka."

"The Appellant's account of the conduct of the security forces arresting her is consistent with the background country evidence and contains no significant apparent improbabilities".

Sri Lanka 8 refusal letter:
"It also appears inconsistent that...the army would also be willing to release you on the strength of a bribe."

Sri Lanka 8 Immigration Judge:
"…the agent…bribed various officials to ensure the appellant passed through Colombo airport and on his departure. The objective evidence clearly shows that this can be the case and I accept the appellant's evidence."

The application of Section 8

In one case the primary reason the Immigration Judge overturned the initial decision was because the decision maker did not properly apply Section 8 of the Asylum and Immigration (Treatment of Claimant, etc.) Act, 2004.

However, reaching a decision on Section 8 before substantially considering the claim, or without giving proper consideration to a reasonable explanation from the applicant for their actions, was also identified as a secondary reason for an initial determination being overturned in 15 other cases.

Section 8 of the 2004 Act came into force on 1 January 2005 and requires decision makers to "take into account as damaging to the applicant's credibility any behaviour they think is designed or likely to conceal information, mislead, or obstruct or delay a decision."

However, it also stresses that "it is incorrect to start consideration of the credibility of the claim by reference to Section 8" (11.16 of the Credibility Guidance) and the legislation makes clear that case owners should take into account any reasonable explanation given by the asylum seeker for the delay in making the application.

The evidence from the research shows that this guidance was not followed in a significant number of cases. In a total of 16 cases in the research sample, the Immigration Judge overturned the point about Section 8, finding that the applicant's credibility had not been damaged by his or her behaviour. The principle areas in which Section 8 was misapplied relate to: the consideration of whether there had been a delay in making an asylum claim; the application of mitigating circumstances; and changes in an individual's circumstances which led to a late application.

In six of the 16 cases, there was an incorrect application of Section 8 and the Immigration Judge found that there either had not been a delay, or considered that a reasonable explanation for the delay had been given, as illustrated in the following case.

Iran 5 refusal letter:

"You were granted leave to enter the UK on the basis that you were returning in this capacity (a Tier 1 post study work visa). You made no mention to the immigration officer that you had a fear of return to Iran. …Furthermore it is noted that you did not seek to apply for asylum despite your claimed fear of return to Iran until the day of the expiry of your current visa."

Iran 5 Immigration Judge:

"I have also considered Section 8 of the 2004 Act and note that the appellant claimed asylum within six days of her return to the UK… I find that the appellant has claimed asylum at the earliest opportunity and that she fully disclosed the facts relating to her own fear of return and that there was no serious delay to undermine the credibility of her claim."

In a further five cases, there was a failure to engage with any mitigating circumstances that may have led to a delay in claiming asylum when applying Section 8 (e.g. torture and mental health issues).

In one case (Sri Lanka 5), Section 8 was applied because there had been an eight day delay in claiming asylum and no account was taken of the fact that the applicant had been subjected to torture of a sexual nature. At appeal, the Immigration Judge did consider the mitigating circumstances.

Sri Lanka 5 Immigration Judge:
"… (the applicant) was mentally unstable when he returned to the country. His sister noted a personality change. She discovered injuries to his back. She persuaded him to claim asylum."

"I find that the fact that his interviews do not record his having said he suffered from torture of a sexual nature does not detract from his credibility."

In another case (Sri Lanka 15), the case owner finds the applicant's credibility is damaged under Section 8 because she "did not claim asylum at the earliest opportunity".

The woman arrived in the UK on 15 January 2012 and claimed asylum on 26 February 2012. The Immigration Judge again took note of the mitigating circumstances.

Sri Lanka 15 Immigration Judge:
"I am conscious of Dr. X's findings that Miss X is experiencing a Major Depressive Episode and is suffering from PTSD (post-traumatic stress disorder). I do not consider that the claimant's (relatively short) delay in claiming asylum is of relevance to her credibility."

In four other cases, the asylum application was only made after the situation in the country of origin deteriorated or the applicant's personal circumstances changed while in the UK. In all cases, Section 8 was invoked, as is illustrated by the following Iranian case.

Iran 8 refusal letter:

"In light of your claim to have been arrested in Iran in 2011, it is considered reasonable to expect that you would have claimed asylum on arrival in the UK in September 2011 or soon after. Your failure to lodge a claim until March 2012 has been found to damage your credibility…".

Iran 8 Immigration Judge:

"It is clear from…the appellant's witness statement that she had a telephone conversation with her father on 12 February 2012 when he told her that the authorities had sent the summons. The fact is that the appellant telephoned the Home Office on 14 February to register her claim and in fact, the Respondent accepts…that the appellant made an appointment with the Asylum Screening Unit on 22 February. It is therefore clear that the appellant's telephone conversation with her father was the trigger for the appellant realising that she was at serious risk on return to Iran. Accordingly, I do not accept the Respondent's suggestion that the appellant delayed in making her claim for asylum."

Not taking account of mitigating circumstances

In three cases the primary reason the Immigration Judge overturned the initial decision was because the decision did not take proper account of mitigating circumstances such as age, education or trauma, and in relation to inconsistencies, lack of detail or coherence in the evidence provided. This was also identified as a secondary reason for an initial determination being overturned in eight other cases.

In paragraph 4.3.1 of the Credibility Guidance, decision makers are told to "be aware of any mitigating reasons why an applicant is incoherent, inconsistent and unable to provide detail, or delays in providing details of material facts. These reasons should be taken into account when considering the credibility of a claim and must be included in the reasoning given in the subsequent decision."

It notes that factors to be considered may include age, gender, mental health issues, mental or emotional trauma, fear and/or mistrust of authorities, feelings of shame, and painful memories, particularly those of a sexual nature with cultural implications.

The following cases illustrate instances where case owners have not taken account of these mitigating circumstances.

Syria 4 refusal letter:
"You answered that 'Turkey, Saudi Arabia and Qatar' opposed a resolution by Arab and European nations in the United Nations Security Council for Syria's President to resign. Given that you claim to have been protesting in February 2012, it is not considered credible that you fail to answer basic questions regarding international politics correctly. It is not accepted that you have undertaken any role in political activities."

Syria 4 Immigration Judge:
"If as claimed he has never had any education and has lived in a rural area without the benefit of electricity, it is just plausible that his information about his home country, as regards matters and events not within his immediate area, would be limited."

Syria 5 refusal letter:
"It is noted that you stated that no other countries share the border with Syria."

Syria 5 Immigration Judge:
"I find it just as plausible that an uneducated farmer from a rural area would possess limited knowledge about his home country beyond his own local area."

Sri Lanka 12 refusal letter:
"…you observed military checkpoints… Your inability to provide any information about an attack leads to the conclusion that you were not engaged in spying for the LTTE as claimed."

Sri Lanka 12 Immigration Judge:
"His failure to recall the date of an attack on a checkpoint does not damage his credibility; this was six years ago and many events have taken place in his life since then."

Syria 9 refusal letter:
"Therefore, it is considered that your lack of any great knowledge of the Yekiti party is inconsistent with your claimed duration of membership of the party and your role within the party."

Syria 9 Immigration Judge:
"It also has to be borne in mind judging the level of the Appellant's knowledge of the policies of the Party that the Appellant states that he is illiterate. Furthermore the Appellant does not claim to have a prominent position within the Party, in particular the Appellant does not claim that he is a high ranking officer in the Party involved in making policy."

3.3 Other problems identified in the initial decisions

The errors highlighted above in relation to case owners not following the UKBA's own credibility guidance are based on the decisions reached by Immigration Judges in their appeal determinations. In addition to this, the research also identified other issues in the reasons for refusal letters which, although not necessarily referred to by the Immigration Judge as being a reason for overturning the initial decision, could also have led to a flawed decision.

The domino effect

During the analysis of the cases, a 'domino effect' was observed by which case owners made flawed credibility assessments based on one aspect of the claim, and then used this to undermine other aspects of the claim. The following example is a clear illustration of the domino effect in action.

Sri Lanka 9 refusal letter

"As it has not been accepted that you were a member of the LTTE, it is not accepted that you were arrested..."

"As it has not been accepted you were arrested, it is not accepted that you were detained or received the treatment you claim to..."

"Given that it has not been accepted that you were arrested or detained, it is not accepted you were released..."

"Given that it has not been accepted that you were arrested and released it is not accepted your father was arrested and questioned."

Inappropriate conduct of interviews

One Iranian applicant (Iran 3), who feared persecution on the basis of his sexual orientation, claimed asylum in April 2012 and was admitted into the detained fast track. The detained fast track procedure should only be used when there is a presumption that a quick decision may be made on the application.

In this case, the evidence indicated that this was a case which should never have been in the detained fast track, and the length of the interview confirmed this. The Immigration Judge specifically commented on the un-reasonable conduct of the asylum interview.

The conduct of the interview does not appear consistent with the guidance in UKBA's *Asylum Process Guidance: Conducting the Asylum Interview* which states in paragraph 4.5 that the interview "…is not an interrogation and should never be a test of endurance."

In another case (Iran 8), the Immigration Judge noted that UKBA did not comply with directions to provide a typed transcript of the Asylum Interview Record (AIR).

In this case the AIR was illegible and this resulted in the appeal being adjourned. The Immigration Judge also criticised the conduct of interview.

Iran 3 Immigration Judge:
"… I feel compelled to observe that the interview record does not make happy reading, on the face of it, from the point of view of reasonable conduct of the interview and the experience to which the appellant was subjected. …The interview contains no less that 436 questions and took place during the course of two separate days. The total length of the interview was in excess of twelve hours. There are instances during the course of the interview of the appellant feeling unwell and feeling in need of medical assistance. To the appellant's credit, I find that he gave a consistent, detailed and honest account of his asylum claim during the course of the interview, despite what appears to have been an uncomfortably difficult interview for him."

Iran 8 Immigration Judge:
"…it does appear to me that many of the answers given by the appellant at her substantive asylum interview have not been recorded correctly. I also note from the final page of the AIR that the words 'not yet read back' appear, suggesting to me that the contents of the copy of the AIR were not read back to the appellant at that time… Many and varied examples of words being misconstrued are given in the appellant's comments (extending to 2.5 pages) but the point which I wish to make is that it is clear that many of the appellant's answers at her Asylum Interview have not been correctly recorded."

Inappropriate use of information from screening

Some decision makers relied on small discrepancies between what was said during screening and the asylum interview, despite the fact that screening is not the place for setting out the detail of an asylum claim.

One case involved a Sri Lankan woman who was detained as a suspected member of the LTTE, tortured and gang raped. She was released after her aunt arranged for a bribe to be paid. The refusal letter stated that "It is considered of significance to note at your screening interview, you made no mention of being tortured (including rape) whilst detained." This issue was addressed by the Immigration Judge at the appeal.

Sri Lanka 7 Immigration Judge:
"Apart from the fact that screening interviews are expressly not the point at which an applicant is asked to set out his or her case in full, the Appellant correctly points out that in response to question 3.1, 'Do you have any medical conditions?' She replied, 'Yes, headaches, forgetfulness and has been sexually assaulted by the army so I have problems with my period'."

Even if the applicant had not specifically mentioned that she had been assaulted by the army at a screening interview, this should not have been used to undermine the credibility of her claim. Someone who has been through a traumatic event should not be expected to disclose it at a screening interview. This is recognised in the Credibility Guidance which states that mitigating factors for delays in providing details or material facts would include trauma and painful memories, particularly those of a sexual nature.

In another example (Iran 17), the case owner found it inconsistent that in his written statement the appellant claimed that the officers in the airport wanted to ask him some "friendly questions" and that they gave him a summons requesting that he report to one of their regional offices, but that at screening the appellant had stated that these people wanted information from him regarding Iranian dissidents. The applicant explained that at screening he was asked for a brief summary of the facts and that he only realised the true motive for the questioning when he attended the regional offices. The Immigration Judge accepted this and found that his credibility was not damaged in this regard.

Using the absence or existence of evidence as the basis for making a negative credibility finding

The research recorded several instances when case owners unreasonably relied on the absence of documentary evidence to conclude that an event did not happen and reached a negative credibility finding.

In one refusal letter (Syria 11), the fact that the applicant had documents confirming his arrest in 1993, but no documents to prove his arrest in 2012, was used to cast doubt on his account. This position was overturned at appeal.

Syria 11 Immigration Judge:
"As to the absence of any official documents relating to the appellant's detention in 2012, the COIS report indicates that it is difficult for an accused person to obtain their own arrest warrant… The absence of any supporting documents is not surprising in these circumstances and does not undermine his account of detention."

In other cases, the absence of evidence was also used to discredit an applicant's account of what happened to them. In a Sri Lankan case, the lack of scarring was used to undermine the asylum claim.

Sri Lanka 12 refusal letter:
"…you were beaten during these interrogations but no longer have any marks or scarring to support your claim to have been mistreated. In light of the conclusions drawn about other elements of your claim and your credibility more generally, it has not been accepted that you were arrested and detained as claimed."

Sri Lanka 12 Immigration Judge:
"The appellant has not attempted to exaggerate what happened to him during his claimed detention. The fact that the appellant did not have scars or other marks to support his claim to have been beaten is not surprising; he has not claimed to have been tortured in the manner of many claimants…I find that his account of being detained is credible."

In another case, the Immigration Judge expressed concern over the way the existence of documentary evidence was wrongly used to dismiss the veracity of an account:

Sri Lanka 1 Immigration Judge:
"It seems to me unfair that the Secretary of State bemoans the absence of documentary proof of arrest and detention when objective evidence is not produced, but when an appellant manages to provide such proof, that is dismissed as being inconsistent with background evidence… However, in this case, the document produced by the appellant is not a warrant of arrest but a receipt that he was in fact arrested."

4. Conclusions

This research focused on initial decisions which were overturned on appeal, and therefore specifically targeted decisions that are more likely to be of poor quality. Consequently, the findings do not necessarily reflect UKBA practice in general.

Having said this, the research clearly shows that in more than 80 per cent of a random sample of cases, flawed credibility assessments are the primary reason why UKBA's initial decision to refuse an asylum claim was found to be wrong by Immigration Judges.

It should also be stressed that a Home Office Presenting Officer was present at appeal to argue the UKBA's case in 78 per cent of the cases reviewed. This strongly indicates that Home Office representation at appeal will not reduce the overturn rate when the initial decision is flawed and that more emphasis needs to be placed on improving the quality of the initial decision in relation to credibility assessments.

The research found that case owners would typically identify an action that they considered implausible, a minor inconsistency or a lack of documentary evidence, and then consider these issues in isolation, rather than looking at all the available information in the round.[8]

Decision makers also focussed on one part of the case that they thought inconsistent or implausible, and then used this as the basis for undermining other aspects of the individual's account.

While one error in evaluating credibility would not necessarily mean that a decision is unsustainable, the evidence from the research indicates that a significant number of case owners are making serious and/or multiple errors in the assessment of credibility which are leading to poor quality decisions. The vast majority of these mistakes could be avoided if case owners properly followed UKBA's own Credibility Guidance.

The research found that evidence submitted before the initial decision needs to be more carefully reviewed and considered. In 66 per cent of the 50 cases in the research sample, some form of documentary evidence (other than personal identification) was provided prior to the initial decision. In seven of the Syrian cases, this evidence included photographs of attendance at demonstrations, news articles, a witness statement, a lease contract, proof of address, a death certificate, embassy visit documents, a military letter and supporting letters.

In eight of the Sri Lankan cases, documentary evidence was submitted to corroborate the claim of torture or to show the after effects of torture prior to the initial decision. This came in the form of photographs, NHS assessment cards, doctors' letters and appointment cards. In six Sri Lankan cases, applicants submitted photographs of their scars to substantiate

8 Tanveer Ahmed [2002 UKIAT 000439] states that while it is for an individual claimant to show that a document on which he seeks to rely can be relied on, the decision maker should "consider whether a document is one on which reliance should properly be placed after looking at all the evidence in the round." For further information see: www.balii.org/uk/cases/UKIAT/2002/00439.html

their claims of torture prior to the initial decision, but these photographs were not accepted in a single case.

In several cases, the decision maker did not adequately assess or research the evidence provided to them by the applicant. For example, in Syria 10, the case owner made a mistake regarding the date the applicant returned to the UK, which was then used to undermine the claim.

In Syria 9, the case owner stated that "An extensive search has been conducted…and no records could be found to indicate the existence of an individual by the name of Mahadean Sheikh Alee being the president of the Yekiti party". Yet at appeal a printout from a website was produced indicating that this was the case.

In Sri Lanka 7, the case owner considered that the applicant's reference to both Vattuvakkal and Mullaitivu as the place of surrender cast doubt on the veracity of their claim when simply checking a map would have revealed that Vattuvakkal lies within Mullaitivu district.

In this last example, the incorrect negative credibility finding could also have been avoided if the case owner had simply put this perceived inconsistency to the applicant.

While the research did not have access to a record of the interview, the available evidence from the appeals indicates that applicants were frequently not given an opportunity to explain actions that were considered implausible or inconsistent, and that material facts were not probed sufficiently at the initial interview.

Many issues brought up at the appeal or in witness statements responding to points made in a refusal letter could have been obtained at the interview through better use of follow-up questions or by putting issues which the case owner considered to be inconsistent or contradictory to the applicant at that time.

This weakness in the interview process has also been highlighted by the UKBA's Quality Audit Team. The Team found that, of the 462 interviews audited between June and September 2012, more than 50 per cent of the cases did not probe material facts fully; more than 35 per cent were recorded as using unsound reasoning on rejected material facts; and nearly 30 per cent did not give the applicant an opportunity to explain internal discrepancies.[9]

The information from this research, and from UKBA's Quality Audit Team, shows that there is an urgent need to improve case owners' interview technique and how they review material facts and perceived discrepancies.

In addition, a more flexible approach to the timeframes for making decision is also likely to have a positive impact on the quality of decisions. If a substantive interview and/or initial decision was briefly delayed in order to acquire further information or to check evidence that had already been submitted, this would help case owners to get the decision right first time.

9 The audit of 356 interviews between March and May 2012 produced very similar results: more than 50 per cent of the cases did not probe material facts fully; 33 per cent were recorded as using unsound reasoning on rejected material facts; and 26 per cent did not give the applicant an opportunity to explain internal discrepancies.

For example, in Iran 2, the reason for refusal letter notes that a reporter's card and a print out of a web blog were produced, but "no weight" was attached to either because a translation was not submitted. The case owner went on to conclude that the applicant was not a journalist and that he did not have his own web blog in Iran.

If the case owner had given the applicant time to translate the documentary evidence submitted in support of his claim, it is extremely likely that his identity would have been accepted and an appeal could have been avoided.

Finally, it should be recognised that credibility assessments are inherently difficult because they require the case owner to break with the instinctive practice of assessing someone's behaviour in relation to whether it fits their own expectations of would be a 'normal' or 'common sense' response to a certain situation.

The reality is that 'common sense' actions differ across countries and situations. Furthermore, people do not always behave rationally or consistently in situations of danger or under extreme pressure. In addition, there is evidence that "memory for traumatic events is often inconsistent and ill-recalled" meaning that a true account is not always detailed and internally consistent.[10]

The research shows that some case owners are having difficulty in relation to these issues, resulting in poor decisions based on the inappropriate use of speculation, mitigating circumstances or Section 8. This needs to be dealt with through better management and training support.

Avoidable mistakes in the initial asylum determination procedure are inefficient, costly and cause the applicant concerned considerable anxiety. This study suggests that a significant number of successful appeals could be avoided if the issue of poor quality credibility assessments by some case owners is effectively addressed. We believe the following recommendations will improve the quality of the decision making process and urge the Government to implement them as a matter of priority.

10 J Herlihy, et. al. What assumptions about human behaviour underlie asylum judgements? International Journal of Refugee Law Vol.22, No.3, Oxford University Press, 2010, page 364.

5. Recommendations

1. The Home Office must monitor the performance of individual case owners and their managers and address high overturn rates on appeal and consistent failure to properly apply policy guidance through appropriate support and training. If poor quality decisions persist then case owners and/or their managers must be removed from these roles.

2. More flexibility should be built into the asylum process to allow relevant materials (including medical evidence, country information and the translations of documents) to be properly considered both prior to and after the substantive interview, particularly if the applicant is unrepresented. Case owners should have discretion to delay a decision or an interview in order to obtain relevant evidence.

3. Decision makers should be required to give applicants an opportunity to explain apparent contradictions in their statements or inconsistencies with objective country of origin information.

4. The Home Office should encourage greater communication between the case owner, the applicant and their legal representative prior to interview, the initial decision and any appeal to try and resolve matters in dispute or to seek clarification around issues of concern (e.g. perceived inconsistencies or implausible behaviour). This could be facilitated by:

    - Ensuring that case owners, applicants and legal representatives have access to full contact details of the other parties, including email addresses and direct phone numbers;
    - Case owners contacting legal representatives or the applicants, using the invitation to interview letter, to indicate what information they would like before or at the asylum interview;
    - Case owners contacting legal representatives or the applicants after the interview to raise any further issues arising from the interview so that these can be addressed prior to making the initial decision.

5. Policy alerts on fast changing country situations should be issued and case owners should always check whether a new OGN, Country of Origin Information Service report or country guidance case has been issued prior to the appeal.

6. Cases with indefensible reasons for refusal should be withdrawn prior to the appeal.

7. Case owners should defend their own decisions at appeal. If Home Office Presenting Officers rather than case owners continue to represent at appeal, then an efficient feedback loop is needed so that case owners can properly learn from their mistakes.

8. Section 8 should be repealed as it gives inappropriate weight to certain actions as damaging to an applicant's credibility. In the short term, current guidance should be amended to provide a wide variety of examples which would be regarded as providing a reasonable explanation for a delay in making an asylum application.

9. Joint training programmes, which include UNHCR and other stakeholders, should be established for case owners to address the problems identified in this research and in particular to deliver:

    - Improved interviewing technique, including making better use of follow-up questions and how to probe material facts;
    - A better understanding of how cultural or personal issues will inhibit or shape an individual's actions in certain circumstances; why people may delay making an asylum application; and how trauma affects memory and recall, (e.g. through interactive learning and role playing exercises);
    - Specialist training for senior case workers, the Quality Audit Team and those providing training so that they are better placed to identify and support staff who are having difficulties with credibility assessments.

10. Access to free expert legal advice and representation should be guaranteed to all asylum seekers prior to their initial interview and throughout the asylum process so that resources are focused on good quality, defensible decisions early in the decision making process.