

# INTERNATIONAL PROTECTION ACT SOLICITOR'S CHECKLIST

*FEBRUARY 2017*

The International Protection Act 2015 will for the first time require that an analysis of refugee status and subsidiary protection eligibility is conducted in a single procedure. Within that analysis the law also requires that an analysis of refugee status eligibility be conducted first and then, only where an applicant does not qualify, that an analysis of subsidiary protection take place. Applications for "Permission to Remain" will be assessed separately if an applicant does not qualify for international protection and should be considered distinctly from such applications. What follows below is a brief outline of some of the steps of analysis that should be undertaken when preparing submissions or reviewing a case.

<b>ISSUES</b>	<b>COUNSEL FILE NOTES/QUESTIONS</b>	√
---------------	-------------------------------------	---

## STAGE ONE: DETERMINE THE FACTS

<b>Capacity</b>	Given that inconsistencies, lack of detail, etc. may be seen as negative credibility indicators does your applicant have any medical reports to suggest that he or she may have troubles with memory, PTSD, etc.?	<input type="checkbox"/>
-----------------	---	--------------------------

<b>Identity</b>	A determination of the applicant's nationality, including whether the applicant is stateless, and if so, what is/are the country/countries of former habitual residency. There may also be a consideration of whether Article 1D or 1E of the Refugee Convention applies or of whether the applicant(s) country of nationality is a designated safe country of origin. Remember, that in certain, limited cases an applicant's identity could lead to protection even where his/her story is disbelieved.	<input type="checkbox"/>
-----------------	---	--------------------------

<b>Applicant's Claim</b>	A basic consideration of the nature of the applicant(s)'s claim(s) for protection including the identification of relevant facts core to the applicant's case. Note should be made of any included dependents or minors and documents available or obtainable for submission by the applicant, including a consideration of whether they are originals or verified documents. Relevant to an applicant's fears are information about family and similarly situated persons. Be very clear who the applicant fears and why. Remember that a protection interview is specific to your applicant. The greater the detail you have about his or her experiences the better prepared you will be to handle issues that arise and to provide the decision maker with necessary detail to help 'shape' the narrative. In IPA for example, detail will be necessary for the second prong analysis [see below].	<input type="checkbox"/>
--------------------------	--	--------------------------

<b>Credibility Issues</b>	<p>An assessment of credibility will firstly require the identification of the material facts of the claim. Material facts go to the heart of a claim, peripheral ones do not. Determining credibility will require an analysis of the material facts asserted by the applicant in order to determine which of these material facts can be accepted for analysing well founded fear and serious harm.</p> <p>When attempting to understand the applicant's story examine any area where detail is missing or it seems implausible, understanding that being able to give an explanation for missing detail or implausibility will help the decision maker deal with that credibility indicator. A pattern of minor credibility issues may be relevant to whether the examiner is satisfied as to the applicant's general credibility and consequently whether the benefit of the doubt may be applied in appropriate cases. Key credibility indicators are:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Sufficiency of detail and specificity.</li> <li><input type="checkbox"/> Internal consistency of oral and written information provided by the applicant.</li> <li><input type="checkbox"/> External consistency of applicant's statements with COI/other evidence.</li> <li><input type="checkbox"/> Plausibility.</li> </ul>	<input type="checkbox"/>
---------------------------	---	--------------------------

## STAGE TWO: ANALYSE REFUGEE PROTECTION STATUS

<b>Persecution IPA, s.7</b>	It is very important to focus on a couple of things about persecution. Firstly, it can be cumulative and secondly, there is a subjective element in that different persons can react differently to the same thing. Remember as well that there is a 'presumption' that if an applicant has been persecuted/faced serious harm before that will create a serious indication for believing – absent good reasons – that it will happen again. [s. 28(6)]	<input type="checkbox"/>
---------------------------------	---	--------------------------

<b>Nexus IPA, ss 2(1), 8, 31</b>	<p>An analysis of whether the feared persecution has a nexus to the Convention. The grounds are set out in the definition of "refugee" which is contained in Section 2(1) of the International Protection Act 2015:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> race</li> <li><input type="checkbox"/> religion</li> <li><input type="checkbox"/> nationality</li> <li><input type="checkbox"/> membership of a particular social group</li> <li><input type="checkbox"/> political opinion</li> </ul> <p>Further guidance on the interpretation of these terms is set out in Section 8 of the Act. Note: (1) the claimed absence of state protection (see s.31 of the International Protection Act 2015) may be linked to a convention nexus. (2) The refugee definition states that persecution can be 'for reasons of' which necessarily implies that imputed characteristics that form the basis of persecution may satisfy the nexus requirement regardless of whether those imputed characteristics are true of the applicant. For a useful overview see:  <a href="http://www.unhcr.org/cgi-bin/texis/vtx/home/opensslPDFViewer.html?docid=4f7d8d189&amp;query=mpsg_2012">http://www.unhcr.org/cgi-bin/texis/vtx/home/opensslPDFViewer.html?docid=4f7d8d189&amp;query=mpsg_2012</a></p>	<input type="checkbox"/>
--	--	--------------------------

ISSUES	COUNSEL FILE NOTES/QUESTIONS	✓
<b>Objective Basis</b>	Once the feared harm is identified as persecutory and having a nexus to Convention an assessment will be made whether, if the applicant were to return to his/her country of origin, he/she would face a 'reasonable chance' of future persecution. This will normally require a consideration of relevant COI, the individual profile and experiences of the applicant, as well as the experiences of similarly situated individuals in the country of nationality. Where refugee <i>sur place</i> claims arise s.29 of the International Protection Act 2015 will be applicable.	
<b>State Protection</b>	Section 31 of the International Protection Act 2015 is applicable to the consideration of whether state protection is available. The analysis should consider whether the applicant or a similarly situated person can genuinely avail of meaningful state protection, having regard to factors such as: the applicant's profile; the general state of law, order, and justice in the country and its effectiveness, including the resources available to the State and its ability and willingness to use them properly and effectively to protect residents; statements of the applicant on the availability of state protection; whether the applicant sought protection prior to fleeing and whether it might reasonably have been forthcoming if he/she had by reference to available COI . Section 28(4) of the International Protection Act 2015 references some of the factors listed here.	
<b>Internal Protection Alternative</b>	Internal Protection Alternative requires a two pronged analysis. It is up to the decision maker to identify a 'specific' IPA. The first thing that must be established is that it is 'practical', 'legal', and 'safe' [s. 32(1)(b)] to get to the IPA. If so, then the IPA itself must be safe from any serious harm/persecution – not simply what is being fled from. If the IPA is safe then the second prong involves whether it would be 'reasonable' for the applicant to live there and this is where a detailed knowledge of the applicant's particular circumstances becomes critical [s.28(4)(c)].	
<b>STAGE THREE: ANALYSE SUBSIDIARY PROTECTION STATUS</b>		
As a solicitor you will not be sure whether a decision maker may grant the applicant refugee status and therefore make an assessment of subsidiary protection irrelevant. Consequently, you will need to address subsidiary protection as well. A solicitor will utilise the same facts for this analysis but rather than analyse 'persecution' the analysis will be of 'serious harm'. Nexus is also irrelevant to subsidiary protection. It is likely that the arguments with respect to 'state protection' and 'internal protection alternative' will be similar but keep an eye out for any particular circumstances of the applicant which might make the outcomes different. For example the 'persecutor' may be different than an actor of 'serious harm' and the consequences of persecution may differ from those of serious harm.		
<b>Subsidiary Protection</b>	Per s.2 of the International Protection Act 2015, there are three distinct forms of 'serious harm' that may give rise to an application for subsidiary protection: a) death penalty or execution, (b) torture or inhuman or degrading treatment or punishment, or (c) serious and individual threat to a civilian's life or person by reason of indiscriminate violence in a situation of international or internal armed conflict. The analysis here will consider whether the harm feared meets one or more of these definitions.	
<b>Objective Basis</b>	Having identified the feared harm, an assessment must be carried out of whether, if the applicant were to return to his/her country of origin, there are substantial grounds for believing that that he/she would face a 'real risk' of serious harm. In the case of (c) this normally requires both an assessment of the level of indiscriminate violence and the factors particular to the applicant that show he/she would be specifically affected per the Elgafagi case. See as well the Diakité case re. the definition of internal armed conflict. A good analysis of (c) can also be found in EASO's Judicial Analysis: <a href="https://www.easo.europa.eu/sites/default/files/public/Article-15c-Qualification-Directive-201195EU-A-judicial-analysis1.pdf">https://www.easo.europa.eu/sites/default/files/public/Article-15c-Qualification-Directive-201195EU-A-judicial-analysis1.pdf</a>	
<b>Exclusion</b>	See Sections 10 and 12 of the International Protection Act 2015. Please note exclusion clauses for subsidiary protection are wider than for refugee status.	
<b>Case Law</b>	Know your case law well and where you see difficult areas of the applicant's claim be prepared with helpful case law. This means Irish law, CJEU, ECtHR and 'persuasive' foreign law – particularly common law. While not binding, it can provide guidance for decision makers and arguments for you. In particular, with regard to refugee law see the Canadian IRB's paper on: <a href="http://www.irb-cisr.gc.ca/Eng/BoaCom/references/LegJur/Pages/RefDef.aspx">http://www.irb-cisr.gc.ca/Eng/BoaCom/references/LegJur/Pages/RefDef.aspx</a>	
<b>COI</b>	COI is a critical component when evaluating future harm. Where possible, always use COI From impeccable sources and be prepared to argue against biased COI Or COI being used to provide policy direction for decision makers [UKBA OGNs]. Where some COI runs against your own COI be prepared to present an argument why a decision maker should choose yours. Highlight pertinent passages for the decision maker.	