EXAMPLES OF GUIDANCE ON CREDIBILITY ASSESSMENT

8. [...] in refugee claims, there is no necessity for the adjudicator to have to be fully convinced of the truth of each and every factual assertion made by the applicant. The adjudicator needs to decide if, based on the evidence provided as well as the veracity of the applicant’s statements, it is likely that the claim of that applicant is credible.

9. Obviously the applicant has the duty to tell the truth. In saying this though, consideration should also be given to the fact that, due to the applicant’s traumatic experiences, he/she may not speak freely; or that due to time lapse or the intensity of past events, the applicant may not be able to remember all factual details or to recount them accurately or may confuse them; thus he/she may be vague or inaccurate in providing detailed facts. Inability to remember or provide all dates or minor details, as well as minor inconsistencies, insubstantial vagueness or incorrect statements which are not material may be taken into account in the final assessment on credibility, but should not be used as decisive factors.

[...]

11. In assessing the overall credibility of the applicant’s claim, the adjudicator should take into account such factors as the reasonableness of the facts alleged, the overall consistency and coherence of the applicant’s story, corroborative evidence adduced by the applicant in support of his/her statements, consistency with common knowledge or generally known facts, and the known situation in the country of origin. Credibility is established where the applicant has presented a claim which is coherent and plausible, not contradicting generally known facts, and therefore is, on balance, capable of being believed.

12. The term “benefit of the doubt” is used in the context of standard of proof relating to the factual assertions made by the applicant. Given that in refugee claims, there is no necessity for the applicant to prove all facts to such a standard that the adjudicator is fully convinced that all factual assertions are true, there would normally be an element of doubt in the mind of the adjudicator as regards the facts asserted by the applicant. Where the adjudicator considers that the applicant’s story is on the whole coherent and plausible, any element of doubt should not prejudice the applicant’s claim; that is, the applicant should be given the “benefit of the doubt”.

UN High Commissioner for Refugees, Note on Burden and Standard of Proof in Refugee Claims, 16 December 1998

VICTIMS OF TORTURE CANNOT BE EXPECTED TO PRESENT FULLY ACCURATE STATEMENTS

7.6 On the State party’s general argument that the first named complainant is not credible, the Committee recalls its jurisprudence that complete accuracy is seldom to be expected by victims of torture and that such inconsistencies as may exist in the complainant’s presentation of the facts are not material and do not raise doubts about the general veracity of her claims, especially since it has been demonstrated that she was repeatedly subjected to rape in detention. [...] 


NEGATIVE CREDIBILITY FINDINGS DO NOT EXEMPT FROM ASSESSING A WELL-FOUNDED FEAR OF PERSECUTION

5.4. The Council wishes to point out that, besides the eventual application of an exclusion clause, the ultimate question to be decided in course of the assessment of eligibility to refugee status is whether or not the applicant has a well-founded fear of being persecuted on any of the grounds set out in the Geneva Convention. If credibility assessment [...] is a step necessary to respond to this question, it shall not dissimulate the question itself. In case a doubt arises concerning the reality of certain facts or the applicant’s sincerity, the establishment of this doubt does not exempt from assessing, in fine, the existence of a well-founded fear of being persecuted, which could be sufficiently established, regardless of the doubt in question, by elements of the case deemed as certain.

Judgment No. 57.425 of the Belgian Council for Alien Law Litigation, 7 March 2011

CONTRADICTIONS GIVING RISE TO NEGATIVE CREDIBILITY FINDINGS SHALL BE PROPERLY NAMED AND DISCLOSED IN THE CASE FILE

[...] – in order that the applicant has the indispensably necessary elements for his/her defence – if the administrative authority questions the verisimilitude of the latter’s allegations as they do not correspond to the disposable objective information on the country of origin, it is desirable that the authority should indicate this contradiction and disclose in the case file the sources considered when coming to such a conclusion.

Judgment No. 7130/2000 of 2004 of the Spanish Supreme Court
ASYLUM AUTHORITIES SHALL TRY TO CLARIFY, NOT ONLY NOTE CONTRADICTIONS

The Court agrees with the appellant in considering unacceptable the practice of the [administrative asylum authority], according to which it does not even try to clarify the contradictions identified during the personal hearing of the asylum-seeker, but it rather takes a decision immediately after the preparation of the interview record and obtaining country information. Thus, the applicant is only informed about the elements disapproved by the defendant from the decision and consequently does not have the possibility to clarify contradictions, which often result from misunderstanding, misperception or the inevitable inaccuracy of interpretation, despite the fact that the law does not exclude, if necessary, the confrontation of the asylum-seeker with the contradictions found in a subsequent hearing. Only this course of action complies with requirements of refugee law, especially since in this procedure, due to the lack of other evidence, the applicant's credibility and her/his contradiction-free narration play a crucial role in decision-making. [...] 

The Court further wishes to point out that in case of subsequent hearings, between which long intervals of time elapse, it cannot be expected that the declarations of the person heard is free of contradictions. According to the Court's opinion, it is exactly the subsequent verbatim repetition of the same narration may indicate a lack of credibility, as this fact clearly signals that the text has been learned by heart. [...] 

Judgment No. 24.K.32 957/2009/23 of the Hungarian Metropolitan Court, 30 September 2010

DEMEANOUR SHALL BE VERY CAUTIOUSLY CONSIDERED IN CREDIBILITY ASSESSMENT, MISUNDERSTANDINGS SHALL BE EXCLUDED

7. [...] the decision-maker must be careful not to misplace reliance upon demeanour and risk construing a deliberate lack of candour a demeanour which may be the result of nervousness, of the stress of the occasion and even of the embarrassment of being an asylum seeker. An apparent hesitation and uncertainty may well be attributable to difficulties of language and comprehension. In the judgment of the Court, before a decision maker in the asylum process bases a rejection of a claim upon lack of credibility based mainly on the personal appearance and demeanour of the claimant, the decision-maker ought to be fully confident that the basis of the claim and all relevant facts and circumstances recounted have been fully and correctly understood and that there is no possibility that the decision-maker and claimant have been at cross purposes on any material point.


LIES MAY HAVE VARYING SIGNIFICANCE, A LIE DOES NOT EXCLUDE CREDIBILITY OR A WELL-FOUNDED FEAR OF PERSECUTION

33. [...] the significance of lies will vary from case to case. In some cases, the [Asylum and Immigration Tribunal] may conclude that a lie is of no great consequence. In other cases, where the appellant tells lies on a central issue in the case, the [Tribunal] may conclude that they are of great significance. [...] It is in such a case that the general evidence about the country may become particularly important. It will be a matter for the [Tribunal] to decide whether the general evidence is sufficiently strong to counteract what we have called the negative pull of the appellant's lies.

MA (Somalia) v Secretary of State for the Home Department [2010] UKSC 49, United Kingdom Supreme Court, 22 November 2010

MEDICO-LEGAL EVIDENCE IN CASE OF TORTURE VICTIMS SHALL BE BASED ON THE ISTANBUL PROTOCOL

29. In cases where the account of torture is, or is likely to be, the subject of challenge, Chapter Five of the United Nations Document, known as the Istanbul Protocol, submitted to the United Nations High Commissioner for Human Rights on 9 August 1999 (Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment) is particularly instructive. [...] 

30. Those requested to supply medical reports supporting allegations of torture by asylum claimants would be well advised to bear [paragraphs 186-187 of the Istanbul Protocol] in mind, as well as to pay close attention to the guidance concerning objectivity and impartiality set out at paragraph 161 of the Istanbul Protocol.

SA (Somalia) v Secretary of State for the Home Department [2006] EWCA Civ 1302, United Kingdom Court of Appeal, 10 October 2006