

# ESTABLISHING IDENTITY FOR INTERNATIONAL PROTECTION: IRELAND

EMN Focussed Study

Corona Joyce

*February 2013*



European Migration Network

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## EMN Focussed Study 2

Corona Joyce

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Study completed by the Irish National Contact Point of the European Migration Network (EMN) which is financially supported by the European Union and the Irish Department of Justice and Equality. The EMN has been established via Council Decision 2008/381/EC.

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## The European Migration Network

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## The Author

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## About this Report

This report is the second in a series of EMN focussed studies. The study provides an overview of challenges and practices facing national authorities, as well as I/NGOs and practitioners, with regard to the establishment of identity of applicants for international protection (i.e. asylum and subsidiary protection) and for the return of rejected applicants.

The report consists of information provided primarily for the purpose of completing an overview Synthesis Report for the above-titled EMN Focussed Study. For this Synthesis Report, contributing EMN NCPs have provided information that is, to the best of their knowledge, up-to-date, objective and reliable within the context and confines of this study. All reports are available at [www.emn.europa.eu](http://www.emn.europa.eu).

The opinions presented in this report are those of the Irish National Contact Point of the European Migration Network and do not represent the position of the Irish Department of Justice and Equality or the European Commission Directorate-General Home Affairs.

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## Abbreviations and Irish Terms

AISIP	Asylum and Immigration Strategic Information System
CTA	Common Travel Area
ECHR	European Convention on Human Rights
ECJ	European Court of Justice
EDEWG	European Document Experts Working Group
EEA	European Economic Area
EURODAC	European Fingerprint Database
EUTR	EU Treaty Rights
FRONTEX	European External Border Agency
Gardaí/Garda Síochána	Police
GNIB	Garda National Immigration Bureau
GRO	General Register Office
HSE	Health Service Executive
iFADO	Leibniz Research Centre for Working Environment and Human Factors
I/NGO	Intergovernmental/Non-Governmental Organisation
iPRADO	Public Register of Authentic Identity and Travel Documents Online
ICI	Immigrant Council of Ireland
INIS	Irish Naturalisation and Immigration Service
IRC	Irish Refugee Council
ISO	International Organisation for Standardisation
ORAC	Office of the Refugee Applications Commissioner
SIS II	Schengen Information System II
UNHCR	United Nations High Commissioner for Refugees
VIES	Visa Information System

# Top-line 'Factsheet'

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## National Contribution

### Context and Scope

Difficulties in the establishment of identity within the international protection and forced return context are acknowledged by Irish policymakers. However, neither EU *acquis* nor Irish legislation contains an explicit definition of 'identity'. It can relate to a person's name and/or personal details, as well as that of wider identity attributes such as nationality, language, religion or ethnic group. In addition, the verification of documentation (such as a birth certificate or identity papers) may be referred to. In both processes, a lack of 'core' identity documentation (whether presented by an applicant or in their possession) is considered a main challenge by authorities, although falsified documentation is also an issue. Authorities have stated that the majority of applicants for international protection do not submit any identity documents as part of their international protection claim; others have been found to be forged, tampered with or belonging to another person.<sup>1</sup> The verification of identity is particularly hard to prove in cases where non-biometric documentation such as birth certificates etc. are produced and where the document may be genuine but the identity of the person in possession is not proven. The use of data-matching systems such as EURODAC etc. has enabled a higher detection rate of multiple identities.<sup>2</sup> The weighting<sup>3</sup> of credible documentation in the international protection process (particularly in asylum determination) is seen as part of a larger picture whereby establishment of identity is seen as part of a general credibility assessment. In both situations, the majority of applications do not necessarily involve an individual's identity being established but rather their nationality.<sup>4</sup> In the case of a forced return of a rejected applicant, the main

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<sup>1</sup> The Office of the Refugee Applications Commissioner *Annual Report 2011* states that '*many such applicants [who stated that they travelled by air to Ireland] produce no passport or other documentary evidence of their stated identity or nationality or any travel documents to show how they travelled to the State.*' Available at [www.orac.ie](http://www.orac.ie).

<sup>2</sup> The emphasis by ORAC on the use of the Dublin Regulation now takes into account visa and/or other residence histories where possible, not captured by the EURODAC system, and as provided for in EU law under Article 21 of the Regulation. ORAC has stated that this has resulted in the 'detection of greater numbers' of applicants who have obtained a visa for another contracting State under the Regulation before entering Ireland and claiming asylum. (Office of the Refugee Applications Commissioner, September 2012.).

<sup>3</sup> The Office of the Refugee Applications Commissioner has noted that, in this regard, 'the UNHCR Handbook in relation to standard of proof is applied. 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. However, it may not be possible for a refugee to prove every part of his/her case and therefore, it is frequently necessary to give the applicant the benefit of the doubt'. (Office of the Refugee Applications Commissioner, November 2012).

<sup>4</sup> *Ibid.* In the case of international protection, the Irish case law indicates that it is important to determine an asylum application in respect of the correct country of nationality. In *Gioshvilli v The Minister for Justice, Equality and Law*



identity-related difficulty relates to the acceptance of the individual's (suspected or believed) embassy to the return of an individual. An individual's presumed embassy will usually conduct verification interviews whereby national officials may verify the nationality (and not necessarily the absolute identity) of the rejected applicant and provide with documentation if necessary. Irish authorities noted that particular complications occur in cases whereby an embassy does not confirm the stated or believed nationality of a rejected applicant prior to forced return.<sup>5</sup>

### Statistics

Comprehensive and reliable statistics on the issue are not available in the national context. Information regarding documentation submitted at first instance is recorded but it may include a national passport, supporting letters or travel documentation. Additional information can become available at a later date but records will not allow for a reliable reading or analysis of data. A 2012 newspaper article stated that cross-checking by British and Irish authorities of fingerprint records under a data sharing initiative showed that '1,300 out of 2,000 failed asylum seekers investigated were known to Britain's Border Agency under a different name' and that, of those looked at, 'about a third had given a different nationality to the UK authorities'. Of the 2,000 failed asylum seekers investigated, 600 had been identified by UK authorities as requesting visas to the UK or previous applications for asylum there. The majority of fingerprint matches of individuals claiming asylum in Ireland had been granted UK visas.<sup>6</sup> In addition, checks on about 5,000 visa applications identified 'almost 600 people applying to come to Ireland with a negative UK immigration history'. In related research in the area on a number of asylum determination case files, the Irish Refugee Council found that

*In 67% of ORAC applications and 11% of Tribunal cases where the applicant submitted documentary evidence particular to the claim, the decision-maker was 'unable to verify the authenticity' in relation to at least some of that evidence.<sup>7</sup>*

### Legislation

Section 8(2)(b) of the *Refugee Act 1996 (as amended)* states that an immigration officer shall seek to establish the 'identity of the person' seeking asylum, and Section 8(2)(c) notes that an immigration officer shall seek to establish the

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*Reform*, 31 January 2003, the High Court (Finlay Geoghegan J), in a decision granting leave for judicial review, held that in considering the asylum claim in relation to a country where the applicant resided (Russia), but not in relation to the applicant's country of nationality (Georgia), it was arguable that the decision-maker erred in law because the decision-makers consideration of the claim related to a country in respect of which the applicant could not claim nationality.

<sup>5</sup> Interview with Department of Justice and Equality officials for the purpose of this focussed study (August 2012).

<sup>6</sup> The Irish Independent (21 May 2012). 'Two-thirds of failed asylum seekers had used false identities'. Available at [www.independent.ie](http://www.independent.ie). The report also highlighted that details of Irish visa applications lodged 'in countries such as Nigeria, Ghana and Pakistan' are also shared with the UK for cross-reference against immigration databases.

<sup>7</sup> Conlan, S., Waters, S. and Berg, K. (2012). *Difficult to Believe. The assessment of asylum claims in Ireland*. Available at [www.irishrefugeecouncil.ie](http://www.irishrefugeecouncil.ie).

'nationality and country of origin of the person'. This investigation is followed by an interview under Section 11 of the 1996 Act in which a more detailed examination takes place. Section 16(6) of the 1996 Act provides for the referral of a query from the Refugee Appeals Tribunal to the Refugee Applications Commissioner. The *European Communities (Eligibility for Protection) Regulations 2006 (S.I. No. 518 of 2006)*, gives effect to *Directive 2004/83/EC*. Regulation 5 gives effect to some of Article 4 of *Directive 2004/83/EC* in providing that certain matters that shall be taken into account by the protection decision maker. Article 4(1) and (2), which specifically refers to 'identity', are not expressly transposed in *S.I. 518 of 2006*. Regulation 5(1), transposing Article 4(3), provides that the protection decision-makers shall take into account, inter alia, the individual position and personal circumstances of the protection applicant, including factors such as background, gender and age.

In the course of assessing the credibility of an applicant, under Sections 11B(a) and (e) of the *Refugee Act 1996 (as amended)*, both the Refugee Applications Commissioner and the Refugee Appeals Tribunal are to have regard to whether the applicant is in possession of 'identity documents, and, if not, whether he or she has provided a reasonable explanation for the absence of such documents' and in the instance of having 'forged, destroyed or disposed of any identity or other documents relevant to his or her application, whether he or she has a reasonable explanation for so doing'. This due regard to the provision of identity documentation is one of several factors to be considered. Regulation 5(3) of the *European Communities (Eligibility for Protection) Regulations 2006 (S.I. 518 of 2006)* provides that where 'aspects of the protection applicant's statements are not supported by documentary or other evidence' those aspects shall not need confirmation when certain conditions are met.<sup>8</sup>

Penalties regarding the provision of false information are provided for under Section 20 of the *Refugee Act 1996 (as amended)* and within the *Immigration Act 2004* for the non-presentation of a passport or equivalent document to establish identity by a non-Irish national<sup>9</sup> when seeking leave to land in Ireland or when requested to do so by a specified person. Sections 9(8)(c) and (f) of the 1996 Act provide for the detention of persons whom an immigration officer or member of An Garda Síochána considers has 'not made reasonable efforts to establish his or her true identity' or 'without reasonable cause has destroyed his or her identity or travel documents or is in possession of forged identity documents'. Section 9A(5)(1) of the Act specifies that the refusal of an applicant to allow his or her fingerprints to be taken under the Act shall be deemed as him or her not having made 'reasonable efforts to establish his or her true identity' in the meaning of Section 9(8)(c), and for the purpose of Section 11C.

The power of the Minister for Justice and Equality to deport applicants who have been refused international protection is set forth in Irish legislation in Section 3 of

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<sup>8</sup> See footnote 3 regarding establishment of credibility and extension of the 'benefit of the doubt'.

<sup>9</sup> With exceptions such as nationals of Northern Ireland or the UK, in cases.

the *Immigration Act 1999*. No reference to verification of identity (or nationality) is made in this Section. The Minister's power to deport is subject to the principle of *non-refoulement* as set down in Section 5 of the *Refugee Act 1996 (as amended)*.

### Authorities Engaged in Identity Establishment

Ireland does not operate a single procedure for protection matters. Applications are submitted to the Office of the Refugee Applications Commissioner (ORAC) for refugee status (followed by appeal to the Refugee Appeals Tribunal), with applications for subsidiary protection status and 'leave to remain' in Ireland under Section 3 of the *Immigration Act 1999 (as amended)* submitted to the Irish Naturalisation and Immigration Service (INIS). An immigration officer is tasked with seeking to establish the identity of a person under Section 8 of the *Refugee Act 1996*. In practice this translates to authorised officers of the Refugee Applications Commissioner as the vast majority of applications for asylum are made at the offices of the Commissioner. The Refugee Appeals Tribunal may ask the Refugee Applications Commissioner to 'make such further inquiries' as necessary. The Minister for Justice and Equality has responsibility for dealing with subsidiary protection, and in the course of determining such a case, will generally have access to an applicant's file in which previous identity and nationality analysis will have been recorded by the Refugee Applications Commissioner and Refugee Appeals Tribunal.<sup>10</sup> New information may also be provided or come to light at this stage; interviews with applicants do not take place but an applicant will be written to with further information requested within a specific time limit.<sup>11</sup> In the case of documentation verification, while some staff at ORAC have received basic training in document verification, overall responsibility lies with An Garda Síochána, notably the Garda Technical Bureau.<sup>12</sup> Cross-border police cooperation is in evidence, including a recent initiative with Northern Ireland.

No specific authority has the operational responsibility for establishing the identity of applicants for international protection who have to be forcibly returned to their presumed country of origin, with the Garda National Immigration Bureau (GNIB) retaining overall operational responsibility. The Repatriation Unit within the Irish Naturalisation and Immigration Service (INIS) in the Department of Justice and Equality retains overall responsibility for organising return and works with relevant embassies to establish the nationality of individuals.

### Identity Verification

Accepted core documentation for establishing nationality and identity are valid passports or other equivalent biometric identification documents only.<sup>13</sup> Other

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<sup>10</sup> Interview with Department of Justice and Equality officials for the purpose of this focussed study (August 2012).

<sup>11</sup> *Ibid.*

<sup>12</sup> *Ibid.*

<sup>13</sup> *Ibid.*

documentation such as birth and divorce certificates, marriage licences and other certificates such as qualification certificates, trade union cards and supporting letters, are considered as contributing towards building up an individual's identity.<sup>14</sup> A list of identity documents is contained within Section 20 of the *Refugee Act 1996 (as amended)*, however the list is not exhaustive, and relates to the prohibition of false information and alternation of identity documents. Government officials interviewed for the purpose of this study noted that there is an overall difficulty in authenticating documents without biometric data; documents such as birth certificates and driver's licences are considered easily falsified. In addition, non-biometric documents may be genuine but the information can be false or forged.<sup>15</sup>

Interviews of applicants for asylum are carried out as standard practice under Sections 8 and 11 of the *Refugee Act 1996 (as amended)* and may determine probable country of origin. In the context of forced return, interviews<sup>16</sup> with embassies of the (presumed) country of nationality take place, with Irish authorities providing supporting documentation as on file and submitted by the applicant.<sup>17</sup> The determination of whether a rejected applicant is a national of a country is usually not taken on the basis of documentation alone and in many cases it relates to nationality establishment rather than identity confirmation. An embassy may accept some supporting documentation which is not accepted by Irish authorities e.g. trade union documents, on the basis that they will be able to verify the authenticity. In cases whereby a national passport has been submitted by the individual pre-forced return, a verification check will generally be undertaken by an embassy.<sup>18</sup>

Other practices used in Ireland include language analysis (occasionally used in selected cases by ORAC for certain countries whereby historical investigations may have indicated high rates of individuals from a neighbouring country claiming that nationality) and age assessment in the case of unaccompanied minors. No bone testing is currently provided for although it was in evidence in the past. An immigration officer can conduct an assessment at port of entry, and social work teams assess an unaccompanied minor's age when a minor enters State care by using a social work assessment tool.<sup>19</sup> ORAC also forms an opinion as to the age of an unaccompanied minor applying for asylum via a specific interview by trained officers. The taking of fingerprints for all applicants for international protection over 14 years<sup>20</sup> takes place for the purposes of EURODAC only. Section 9(8)(c) of the *Refugee Act 1996 (as amended)* will be inferred when an applicant refuses to permit their fingerprints to be taken and establish their 'true identity' under a duty to cooperate. Authorities have stated that checking of

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<sup>14</sup> *Ibid.*

<sup>15</sup> *Ibid.*

<sup>16</sup> Either in person or by telephone.

<sup>17</sup> As the rejected applicant is no longer within the international protection process. Interview with Department of Justice and Equality officials for the purpose of this focussed study (August 2012).

<sup>18</sup> Interview with Department of Justice and Equality officials for the purpose of this focussed study (August 2012).

<sup>19</sup> *Ibid.*

<sup>20</sup> Under 14 years, only photographs are taken.

data with that of the UK visa system is in operation in accordance with EU law under Article 21 of the Dublin Regulation.<sup>21</sup> In cases of a match, this information is put forth to an applicant during the course of their asylum interviews. Officials have noted matches related to an individual entering the UK on a genuine passport; information can then be verified as to identity and nationality. All asylum applicants are photographed as per standard practice and provided with a 'Temporary Registration Certificate/Card' which contains a person's photograph and is evidence that they have applied for asylum. It is not an identity card.<sup>22</sup> Photographs of rejected applicants for international protection pre-forced return are not taken automatically unless it concerns a criminal issue. In the case of an embassy conducting a phone interview, a photograph will be supplied.<sup>23</sup> DNA analysis is not routinely used in the case of applicants for international protection, although it has been used in cases whereby minors were subsequently added to asylum applications and a verification of their relationship to the family unit is required.<sup>24</sup> DNA analysis of applicants refused asylum, pre-forced return rarely takes place, and primarily in the case of Irish-born children paternity links post-Zambrano ECJ ruling.

An Garda Síochána (and specifically the Garda Technical Bureau) acts as a central competence centre for the verification of documentation.<sup>25</sup> This checking process relates to the overall credibility of the document and does not act as identity verification. Other institutions that provide advisory support to officials in establishing the identity of applicants for refugee status include the Refugee Documentation Centre<sup>26</sup> in cases of country of origin information; and the Social Work Team for Separated Children Seeking Asylum in cases concerning unaccompanied minors. This Social Work Team is based within the Health Service Executive (HSE) and can assist with family tracing, however on a limited basis and with limited results.<sup>27</sup>

EURODAC is used by officials working in the area of refugee status determination, primarily in relation to transfers under the Dublin Regulation. In the Irish case, contact with the UK is most frequent. In cases whereby a return to another Member State cannot take place, the issue of multiple identities and nationalities can be raised with the applicant under their substantive 'Section 11' interview at ORAC. SIS II is available to officials working in the area of international protection determination, although limited use is made of this as it deals primarily with criminal offences. Officials working in the area of international protection also maintain bilateral cooperation with authorities in other countries to access other relevant information.

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<sup>21</sup> Office of the Refugee Applications Commissioner (November 2012).

<sup>22</sup> [www.orac.ie](http://www.orac.ie).

<sup>23</sup> Interview with Department of Justice and Equality officials for the purpose of this focussed study (August 2012).

<sup>24</sup> Cited cases included that of children listed on several different asylum applications.

<sup>25</sup> Interview with Department of Justice and Equality officials for the purpose of this focussed study (August 2012).

<sup>26</sup> <http://www.legalaidboard.ie/lab/publishing.nsf/Content/RDC>.

<sup>27</sup> Interview with Department of Justice and Equality officials for the purpose of this focussed study (August 2012).

## Outcomes

All parties consulted for this focussed study noted that, in general, decision-making on applications for international protection in Ireland is not based solely on the successful establishment of identity but rather on the material facts presented by the applicant, together with other relevant information, which is used to build a 'picture' incorporating all aspects of an applicant's case and credibility.<sup>28</sup> The extent, and the aspect, of cases whereby decision-making is centred on the establishment of an individual's identity will vary according to the facts of the respective case. An individual may be deemed eligible for international protection in cases whereby only aspects of their identity have been established (such as nationality or religion) or where serious concerns may have been raised regarding their identity. In the case of subsidiary protection determinations,<sup>29</sup> applicants may be granted a status based on nationality and risk regardless of a prior refusal of refugee status based on serious credibility findings including identity. The Irish Refugee Council has highlighted the role of identity, and that of documentary evidence and the burden and standard of proof, in asylum determination.

A significant proportion of rejected applicants for international protection cannot be returned to their country of origin due to the fact that measures used to establish identity are not always successful. Authorities stated that it has proven difficult to establish the nationality of applicants from countries without a recognised functioning authority or where it is suspected that false documentation may be easily procured. It was also noted that in the latter case, applicants have often been found to have used 'genuine' documentation to travel to Ireland.<sup>30</sup> Irish authorities have noted that historically a high proportion of asylum applicants in the State came from Nigeria and Romania, which resulted in a building up of country expertise and knowledge regarding the establishment of nationality for these countries.<sup>31</sup>

Regarding international protection decisions, no grading structure is in evidence. Section 11B of the *Refugee Act 1996 (as amended)* refers to the overall 'credibility' of an applicant, however the relative weighting of various methods of identity verification are not clear nor are any legislation, policy or practice guidelines in use for such.<sup>32</sup> The benefit of the doubt is provided to applicants regarding their identity and/or nationality in the absence of conflicting, and presence of supporting, information.

A decision may be taken to declare a positive international protection status in cases whereby serious concerns surrounding an applicant's core identity (such as name or age) exist, but where an assessment of a serious risk (based on believed

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<sup>28</sup> *Ibid.*

<sup>29</sup> As noted earlier, Ireland does not operate a single protection procedure. The hearing of a subsidiary protection claim occurs after that of refugee status.

<sup>30</sup> Interview with Department of Justice and Equality officials for the purpose of this focussed study (August 2012).

<sup>31</sup> *Ibid.*

<sup>32</sup> *Ibid.*

nationality or religion) remains. No specific weighting is attached to the establishment of an applicant's identity or other factors. However, the requirement for identity establishment in a case does not apply equally in all protection cases or decisions and rather varies according the specificities of an individual's case.

In the case of forced return, in order to prevent *refoulement*, establishment of an individual's nationality (if not identity) is required and generally taken by the relevant embassy.<sup>33</sup> In cases where the Zambrano ECJ judgment may apply, a return decision can only be deferred following verifiable DNA evidence.<sup>34</sup>

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<sup>33</sup> *Ibid.*

<sup>34</sup> *Ibid.*

# Section 1

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## The National Framework

### 1.1 THE CHALLENGES AND SCOPE OF THE ISSUE

*Is the issue of establishing identity in the absence of credible documentation considered an issue within the framework of the procedure for*

*(a) international protection?; and*

*(b) the forced return of a rejected applicant to their (presumed) country of origin?*

*If Yes, briefly outline for either or both of the two cases above, the main issues, challenges and difficulties within your (Member) State (e.g. no identification documents, false documents, multiple identities, applicants from certain Third Countries)*

The issue of establishing identity<sup>35</sup> in the absence of credible documentation is considered a notable challenge in both the procedure for international protection and forced return of a rejected applicant to their country of origin. In both processes, a lack of ‘core’ identity documentation (whether presented by an applicant or in their possession) is considered the main challenge by authorities, although falsified documentation is also an issue. Authorities have stated that the majority of applicants for international protection do not submit any identity documents as part of their international protection claim; others have been found to be forged, tampered with or belonging to another person.<sup>36</sup> Authorities noted confirmation of a person’s identity is particularly hard to prove in cases such as birth certificates, where the document may be genuine but it is difficult to link with the individual who is submitting it or has it in their possession. The use of data-matching systems such as EURODAC has enabled a higher detection rate of multiple identities.<sup>37</sup> However, and as noted later, the weighting of ‘credible’

<sup>35</sup> As discussed in Section 2.1, no explicit definition of ‘identity’ exists in legislation in Ireland. The determination of ‘identity’ can be seen to relate to a person’s name and/or personal details, as well as that of wider identity attributes such as nationality, language, religion, ethnic grouping etc. In addition, when speaking of the establishment of identity, the actual verification of documentation may often be referred to. For the purposes of this study, all such terms will be included.

<sup>36</sup> Interview with Department of Justice and Equality officials for the purpose of this focussed study (August 2012). The Office of the Refugee Applications Commissioner *Annual Report 2011* states that ‘many such applicants [who stated that they travelled by air to Ireland] produce no passport or other documentary evidence of their stated identity or nationality or any travel documents to show how they travelled to the State.’ Available at [www.orac.ie](http://www.orac.ie).

<sup>37</sup> The emphasis by ORAC on the use of the Dublin Regulation now takes into account visa and/or other residence histories where possible, not captured by the EURODAC system, and as provided for in EU law under Article 21 of the Regulation. ORAC has stated that this has resulted in the ‘detection of greater numbers’ of applicants who have



documentation in the international protection process (particularly in asylum determination) is seen as part of a general credibility assessment. The Irish Refugee Council has noted that the ‘most crucial evidence’ in the asylum determining process should be that of the applicant’s account, and that it is ‘often extremely difficult’ for applicants to obtain any form of documentary evidence including identity documents, due to unstable countries of origin, fear of persecution and the risk of government surveillance and harm to family members. Obstacles post-arrival in Ireland include a limited timeframe for submission of documents by applicants, as well as limited financial resources to obtain these.<sup>38</sup>

In the case of a forced return of a rejected applicant, authorities stated that the main identity-related difficulty relates to the acceptance of the individual’s (presumed) embassy to the return of an individual. Interviews with an individual’s embassy usually take place in which national officials may verify the nationality (and not necessarily the exact identity) of the rejected applicant and provide them with travel documentation if necessary. Irish authorities noted that particular complications occur in cases where an embassy does not confirm the stated or believed nationality of a rejected applicant.<sup>39</sup>

*If Yes, please also indicate which of the following factors listed below contribute to the issues. Please support your answers with reference to statistics (e.g. those presented under Question 1.2 below), research or any other sources of information (e.g. media debates, case-law, policy documents, practitioners’ views).*

- *The volume of cases where no credible documentation is available to substantiate an applicant’s identity is considered to be large and/or growing.*

Yes. In the Irish context, the majority of cases concerning applicants in both the international protection and forced return procedures are not considered to have ‘credible’ documentation on file.<sup>40</sup> This refers to both the estimated number of cases in which no documentation is provided by the applicant (the vast majority, as noted earlier) as well as the nature of the documentation (passport and national identity card as ‘core’ documents).

- *The measures used to establish an applicant’s identity in the absence of credible documentation are resource-intensive.*

Yes. Irish authorities see the confirmation and establishment of nationality of rejected applicants prior to a forced return taking place as particularly resource-intensive.<sup>41</sup> However, authorities have highlighted that within the international

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obtained a visa for another contracting State under the Regulation before entering Ireland and claiming asylum. (Office of the Refugee Applications Commissioner, September 2012.)

<sup>38</sup> Conlan, S., Waters, S. and Berg, K. (2012). *Difficult to Believe. The assessment of asylum claims in Ireland*. Available at [www.irishrefugeecouncil.ie](http://www.irishrefugeecouncil.ie).

<sup>39</sup> Interview with Department of Justice and Equality officials for the purpose of this focussed study (August 2012).

<sup>40</sup> *Ibid.*

<sup>41</sup> *Ibid.*

protection and forced return process, the verification of an individual's identity in a strict legal sense does not take place. For example, in the case of applications under the refugee status determination procedure, processing of an application will take place under the name provided by the applicant unless certain other information comes to light during the procedure. As discussed later in this study, conflicting information may come to light from the checking of fingerprints, from within the Irish Asylum and Immigration Strategic Information System (AISIP), or more general questions regarding the veracity of documentation or language analysis.<sup>42</sup>

- *The measures used to establish identity are not always successful.*

Yes. Irish authorities have stated that this is the case for both applicants for international protection and rejected applicants prior to a forced return taking place. In both situations, the majority of applications do not necessarily result in the establishment of an individual's exact identity but rather their nationality.<sup>43</sup>

- *Decision-making on applications for international protection is difficult due to the fact that measures used to establish identity are not always successful.*

Irish authorities have noted that this is accurate to a certain degree. All parties consulted for this focussed study noted that, in general, decision-making on applications for international protection in Ireland is not based solely on the successful establishment of identity but rather on the material facts presented by the applicant, together with other relevant information, which is used to build a 'picture' incorporating all aspects of an applicant's case.<sup>44</sup> The extent to which decision-making is centred on the establishment of an individual's identity will vary according to the facts of the respective case. An individual may be deemed eligible for international protection by authorities in cases where only particular parts of their identity have been established (such as nationality or religion), or indeed where serious concerns have been raised regarding their identity. In the case of subsidiary protection determinations,<sup>45</sup> applicants may be granted status based on nationality and risk regardless of a prior refusal of refugee status based on wider credibility findings including identity.

The Irish Refugee Council has highlighted the role of identity, and that of documentary evidence and the burden and standard of proof, in asylum determination. In addition, and noting the requirement of the Refugee Appeals Tribunal member to state the reason for discounting or rejecting a piece of

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<sup>42</sup> Office of the Refugee Applications Commissioner (September 2012). In operation since October 2011.

<sup>43</sup> Interview with Department of Justice and Equality officials for the purpose of this focussed study (August 2012). In the case of international protection, the Irish case law indicates that it is important to determine an asylum application in respect of the correct country of nationality. In *Gioshvilli v The Minister for Justice, Equality and Law Reform*, 31 January 2003, the High Court (Finlay Geoghegan J), in a decision granting leave for judicial review, held that in considering the asylum claim in relation to a country where the applicant resided (Russia), but not in relation to the applicant's country of nationality (Georgia), it was arguable that the decision-maker erred in law because the decision-makers consideration of the claim related to a country in respect of which the applicant could not claim nationality.

<sup>44</sup> *Ibid.*

<sup>45</sup> In Ireland, the hearing of a subsidiary protection claim occurs after that of refugee status.

documentary evidence of manifest importance, the Irish Refugee Council has noted the use of such documentary evidence somewhat ‘selectively and inconsistently’ by both ORAC and the Tribunal. It highlighted cases whereby both determining authorities ‘only referred to documentary evidence in order to question the applicant’s account and undermine his or her credibility. This gave rise to situations where applicants were disbelieved whether they submitted a certain document or not.’<sup>46</sup>

- ***A significant proportion of rejected applicants for international protection cannot be returned to their country of origin due to the fact that measures used to establish identity are not always successful.***

Yes. Authorities have noted that in the Irish context, this is an accurate statement.<sup>47</sup>

***List the countries of (claimed) origin for which establishing identity is particularly difficult, (i) when considering asylum applications; (ii) for implementing return***

ORAC current information systems do not provide for such data.<sup>48</sup>

Authorities stated that it has proven difficult to establish the nationality of applicants from countries without a recognised functioning authority or where it is suspected that false documentation may be easily procured. It was also noted that in the latter case, applicants have often been found to have used ‘genuine’ documentation to travel to Ireland.<sup>49</sup>

Irish authorities have noted that historically a high proportion of asylum applicants in the State came from Nigeria and Romania, which resulted in a building up of country expertise and knowledge regarding the establishment of nationality for these countries.<sup>50</sup>

***Other (Member) State specific factors***

None to report.

***If No, please provide reasons why the question of establishing identity in the absence of credible documentation is not considered an issue within the framework of the procedure for***

***(c) international protection; and***

***(d) the forced return of a rejected applicant to their (presumed) country of origin.***

N/A.

<sup>46</sup> An example provided included a case whereby an applicant was ‘held by the Tribunal member to have failed to provide a reasonable explanation for the lack of identification documents. Yet, the same Tribunal member accepted she was from Somalia, where no such documents are issued.’ See Conlan, S., Waters, S. and Berg, K. (2012). *Difficult to Believe. The assessment of asylum claims in Ireland*. Available at [www.irishrefugeecouncil.ie](http://www.irishrefugeecouncil.ie).

<sup>47</sup> Interview with Department of Justice and Equality officials for the purpose of this focussed study (August 2012).

<sup>48</sup> Office of the Refugee Applications Commissioner (September 2012).

<sup>49</sup> Interview with Department of Justice and Equality officials for the purpose of this focussed study (August 2012).

<sup>50</sup> *Ibid.*

## 1.2 STATISTICS ON THE SCALE OF THE ISSUE

Comprehensive and reliable statistics on this topic are not available in the Irish context. While information regarding documentation submitted at first instance is recorded, the nature of such varies across cases and may range from a national passport to supporting letters or travel documentation. Authorities added that while additional information may become available at a later date, records will not allow for a reliable reading or analysis of data.

A 2012 newspaper article stated that cross-checking by British and Irish authorities of fingerprint records under a data sharing initiative showed that ‘1,300 out of 2,000 failed asylum seekers investigated were known to Britain’s Border Agency under a different name’ and that of those looked at, ‘about a third had given a different nationality to the UK authorities’. Of the 2,000 failed asylum seekers investigated, 600 had been identified by UK authorities as requesting visas to the UK or previous applications for asylum there. The majority of fingerprint matches of individuals claiming asylum in Ireland had been granted UK visas. An official quoted in the article was quoted as stating that ‘more than 80 people who had claimed asylum here as Somalis had previously been granted a UK visa using a Tanzanian identity’.<sup>51</sup> In addition, checks on about 5,000 visa applications identified ‘almost 600 people applying to come to Ireland with a negative UK immigration history’. The cross-referencing took place under a memorandum of understanding on visa data exchange signed by both governments and issued with a Joint Statement in December 2011 to protect the Common Travel Area (CTA) between the UK and Ireland.<sup>52</sup>

In related research in the area on a number of asylum determination case files, the Irish Refugee Council found that:

*In 67% of ORAC applications and 11% of Tribunal cases where the applicant submitted documentary evidence particular to the claim, the decision-maker was ‘unable to verify the authenticity’ in relation to at least some of that evidence. Usually, neither ORAC nor the Tribunal gave reasons for their inability to verify documents.*<sup>53</sup>

The IRC does note the distinction between ‘formal’ documents such as passports, identity cards, membership cards and reference letters and ‘less formal’ documents such as letters from relatives and photographs. When discussing statistics on the matter, the acceptance of documentary evidence as verification of identity must be noted. The Irish Refugee Council has highlighted both the inconsistency of what is accepted as an ‘identity’ document as well as a particular case involving documentary evidence held by another government office. It was

<sup>51</sup> The Irish Independent (21 May 2012). ‘Two-thirds of failed asylum seekers had used false identities’. Available at [www.independent.ie](http://www.independent.ie). The report also highlighted that details of Irish visa applications lodged ‘in countries such as Nigeria, Ghana and Pakistan’ are also shared with the UK for cross-reference against immigration databases.

<sup>52</sup> Irish Naturalisation and Immigration Service (December 2011). *Ireland-UK Accord to Further Secure the Common Travel Area*. Available at [www.inis.gov.ie](http://www.inis.gov.ie).

<sup>53</sup> Conlan, S., Waters, S. and Berg, K. (2012). *Difficult to Believe. The assessment of asylum claims in Ireland*. Available at [www.irishrefugeecouncil.ie](http://www.irishrefugeecouncil.ie).

noted that while a foreign birth certificate was accepted as evidence of 'identity' in one case, in another analysed case, a similar document was not accepted as identification. In another case analysed by the IRC, while an applicant's solicitor provided copies of identity documents held on file by the Garda National Immigration Bureau (GNIB) including a birth certificate and national ID card, ORAC requested additional information stating that

*'In any event, without the applicant's own valid passport, his nationality cannot be established with any degree of certainty. All that can be said is that the applicant has not managed to establish his identity and nationality.'*



Total Number of Positive Decisions	2007	2008	2009	2010	2011	Additional Information (e.g. Source, caveats, reasons for trends, top five nationalities, with numbers for total applicants – see below Table also)										
	Positive First Instance Decisions on Asylum Applications by Nationality 2007-2011 (rounded)					2007*		2008		2009		2010		2011		
	Total	375	595	395	155	150	Total	375	Total	300	Total	125	Total	25	Total	75
	Iraq	100	110	Somalia	25	Somalia	100	Iraq	110	Somalia	25	Somalia	5	Pakistan	15	
	Sudan	60	Sudan	35	Sudan	20	60	Sudan	35	Sudan	20	China (incl Hong Kong)	5	Afghanistan	10	
	Somalia	30	Somalia	25	Iraq	20	30	Somalia	25	Iraq	20	Afghanistan	5	Iran	10	
	Eritrea	20	Eritrea	20	Eritrea	10	20	Eritrea	20	Eritrea	10			Palestinian territory	10	
	Kuwait	20	Pakistan	15	Afghanistan	10	20	Pakistan	15	Afghanistan	10			Russia	5	
				Pakistan	10									Somalia	5	
														Sudan	5	
														Kyrgyzstan	5	
Source: Eurostat.																
Note: 2007 data refers to all positive decisions.																
* listed as provisional																
Positive Second Instance Decisions on Asylum Applications by Nationality 2008-2011 (rounded)																
	2007*	2008		2009		2010		2011								
Total	375	Total	295	Total	270	Total	130	Total	75							
Iraq	100	Nigeria	55	Iraq	50	Nigeria	15	Afghanistan	10							
Sudan	60	Iraq	30	Nigeria	25	Afghanistan	15	Belarus	5							
Somalia	30	Afghanistan	20	Afghanistan	25	Somalia	10	Russia	5							
Eritrea	20	Somalia	15	Iran	20	Iran	10	Democratic Republic of the Congo	5							
Kuwait	20	Pakistan	15	Croatia	10	Albania	5	Côte d'Ivoire	5							
				Angola	10	Kosovo (under UN Security Council Resolution 1244/99)	5	Nigeria	5							

	2007	2008	2009	2010	2011	Additional Information (e.g. Source, caveats, reasons for trends, top five nationalities, with numbers for total applicants – see below Table also)																																																																																																
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Additional Information (e.g. Source, caveats, reasons for trends, top five nationalities, with numbers for total applicants – see below Table also)		2007	2008	2009	2010	2011					
		3,430	5,490	6,170	4,230	2,545					
<b>Total Number of Negative Decisions</b>	<b>Negative First Instance Decisions on Asylum Applications by Nationality 2007-2011</b>	<b>2007*</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>					
	Total	3,430	Total	3,325	Total	3,010	Total	1,575	Total	1,295	
	Nigeria	1,080	Nigeria	1,025	Nigeria	595	Nigeria	340	Nigeria	245	
	China (incl Hong Kong)	220	Pakistan	195	Pakistan	290	Pakistan	170	Pakistan	190	
	Georgia	160	Democratic Republic of the Congo	165	Democratic Republic of the Congo	145	Afghanistan	70	Democratic Republic of the Congo	90	
	Democratic Republic of the Congo	140	Georgia	135	Georgia	140	Cameroon	60	Zimbabwe	65	
	Iraq	140	Iraq	135	Somalia	135	Somalia	60	Afghanistan	65	
	<i>Source: Eurostat.</i>										
	<i>Note: 2007 data refers to all negative decisions.</i>										
	<i>* listed as provisional</i>										
<b>Negative Second Instance Decisions on Asylum Applications by Nationality 2007-2011</b>	<b>2007*</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>						
	Total	3,430	Total	2,165	Total	3,160	Total	2,655	Total	1,250	
	Nigeria	1,080	Nigeria	825	Nigeria	825	Nigeria	670	Nigeria	275	
	China (incl Hong Kong)	220	Democratic Republic of the Congo	125	Pakistan	260	Pakistan	220	Pakistan	170	
	Georgia	160	Georgia	85	Georgia	190	Democratic Republic of the Congo	140	Democratic Republic of the Congo	90	
	Democratic Republic of the Congo	140	Somalia	75	Democratic Republic of the Congo	155	Zimbabwe	115	Zimbabwe	65	
	Iraq	140	Pakistan	75	Zimbabwe	110	Ghana	110	Zimbabwe	60	
	<i>Source: Eurostat.</i>										
	<i>Note: 2007 data refers to all negative decisions.</i>										
	<i>* listed as provisional</i>										

	2007	2008	2009	2010	2011	Additional Information (e.g. Source, caveats, reasons for trends, top five nationalities, with numbers for total applicants – see below Table also)
Total Number of Negative Decisions for applicants whose identity was not documented at the time of application	N/A	N/A	N/A	N/A	N/A	
Total Number of Negative Decisions for applicants whose identity was not considered by the sufficiently established by the decision-making authorities	N/A	N/A	N/A	N/A	N/A	
Total number of (Forced) Returns undertaken of all rejected applicants	N/A	N/A	N/A	N/A	N/A	
Number of (Forced) Returns of rejected applicants whose identity had to be established at the time of return	N/A	N/A	N/A	N/A	N/A	
Number of (Forced) Returns of rejected applicants whose return could not be executed as their identity was not considered to be sufficiently established by the authorities of the (presumed) country of origin	N/A	N/A	N/A	N/A	N/A	

### 1.3 RELEVANT EU AND NATIONAL LEGISLATION

*Is the process to be used to determine identity within the procedure for international protection laid down in legislation?*

*If Yes, briefly specify which legislative documents, including their link to relevant EU acquis, regulate the process of identity determination in relation to the procedure for international protection.*

Ireland does not operate a single procedure for international protection. The process for determination of an application for asylum is provided for in legislation whereby an applicant will first complete an application form before undertaking an interview under Section 8 of the *Refugee Act 1996 (as amended)* during which a determining officer would examine further as to the nationality, language spoken and documentation submitted for verification.<sup>54</sup> This is followed by an interview under Section 11 of the 1996 Act in which a more detailed interview takes place. This interview looks more in-depth at nationality determination rather than specific 'identity'. In order to assist in evaluating the applicant's story the ORAC caseworker researches country of origin information.

#### *Identity Establishment Procedure*

The *Refugee Act 1996 (as amended)* is relied on to give effect to *Directive 2004/83/EC*. Section 8(2)(b) of the 1996 Act provides that an immigration officer shall seek to establish the 'identity of the person' seeking asylum. Section 8(2)(c) provides that an immigration officer shall seek to establish the 'nationality and country of origin of the person'. This interview is followed by an interview under Section 11 of the 1996 Act in which a more detailed interview takes place. Section 16(6) of the 1996 Act provides for the referral of a query from the Refugee Appeals Tribunal to the Refugee Applications Commissioner, and it is therefore possible that the Tribunal could refer identity establishment to the Commissioner to carry out.

#### *Matters Relevant to Identity*

*S.I. No. 518 of 2006, the European Communities (Eligibility for Protection) Regulations 2006*, gives effect to *Directive 2004/83/EC*. Regulation 5 gives effect to some of Article 4 of *Directive 2004/83/EC* in providing that certain matters that shall be taken into account by the protection decision maker. Article 4(1) and (2), which specifically refers to 'identity', are not expressly transposed in *S.I. 518 of 2006*. Regulation 5(1), transposing Article 4(3), provides that the protection decision-makers shall take into account, inter alia, the individual position and personal circumstances of the protection applicant, including factors such as background, gender and age.

#### *Credibility and Identity*

In the course of assessing the credibility of an applicant, under Sections 11B(a) and (e), both the Refugee Applications Commissioner and the Refugee Appeals

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<sup>54</sup> Interview with Department of Justice and Equality officials for the purpose of this focussed study (August 2012).

Tribunal are to have regard to whether the applicant is in possession of ‘identity documents, and, if not, whether he or she has provided a reasonable explanation for the absence of such documents’ and in the instance of having ‘forged, destroyed or disposed of any identity or other documents relevant to his or her application, whether he or she has a reasonable explanation for so doing’. This due regard to the provision of identity documentation is one of several factors to be considered.

Regulation 5(3) of *S.I. 518 of 2006* provides that where ‘aspects of the protection applicant’s statements are not supported by documentary or other evidence’ those aspects shall not need confirmation where certain conditions are met, including where the applicant has made a ‘genuine effort’ to substantiate their application; he or she has submitted ‘all relevant elements’ at their disposal and provided a satisfactory explanation as to why other relevant elements have not been provided; his or her statements are found to be ‘coherent and plausible’, he or she has applied for protection at the earliest juncture; and his or her ‘general credibility’ has been established.

#### *Penalties Regarding False Information*

Section 20 of the *Refugee Act 1996 (as amended)* prohibits the provision of false information and alteration of identity documents and defines ‘identity documents’ as including ‘a passport, visa, national identity card, driving licence, birth certificate, marriage certificate or any other document establishing an individual’s nationality or identity purporting to be issued by or on behalf of a local or regional authority of any country or by an organ or agency of the United Nations.’ Section 16(6) of the 1996 Act provides for the referral of a query from the Refugee Appeals Tribunal to the Refugee Applications Commissioner, and it is therefore possible that the Tribunal could refer further identity establishment queries to the Commissioner.

Section 20 of the *Refugee Act 1996 (as amended)* creates an offence of tampering or falsifying documents. Penalties are also contained within the *Immigration Act 2004* for the non-presentation of a passport or equivalent document to establish identity by a non-Irish national<sup>55</sup> when seeking leave to land in Ireland or when requested to do so by a specified person.

#### *Detention and Identity*

With regard to leave to enter or remain in the State, Sections 9(8)(c) and (f) of the 1996 Act provide for the detention of persons whom an immigration officer or member of An Garda Síochána considers has ‘not made reasonable efforts to establish his or her true identity’ or ‘without reasonable cause has destroyed his or her identity or travel documents or is in possession of forged identity documents’. Section 9A(5)(1) of the Act specifies that the refusal of an applicant to allow his or her fingerprints to be taken under the Act shall be deemed as him

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<sup>55</sup> With exceptions such as nationals of Northern Ireland or the UK, in cases.

or her not having made ‘reasonable efforts to establish his or her true identity’ in the meaning of Section 9(8)(c), and for the purpose of Section 11C (see below).

***Is the process to be used to determine identity within the procedure for the forced return of rejected applicants laid down in legislation?***

***If Yes, briefly specify which legislative documents, including their link to relevant EU acquis, regulate the process of identity determination in relation to the forced return of rejected applicants.***

The power of the Minister for Justice and Equality to deport applicants who have been refused international protection is set forth in Irish legislation in Section 3 of the *Immigration Act 1999*. No reference to verification of identity (or nationality) is made in this Section. Where deportation follows an investigation of a claim for international protection, investigation by the ORAC will have taken place before the deportation process. The Minister’s power to deport is subject to the principle of *non-refoulement* as set down in Section 5 of the *Refugee Act 1996 (as amended)*.

## 1.4 THE INSTITUTIONAL FRAMEWORK AT NATIONAL LEVEL

***Which national authorities have the operational responsibility for establishing the identity of applicants for international protection?***

*Authorities Engaged in Identity Establishment*

As discussed earlier, an immigration officer is tasked with seeking to establish the identity of a person under Section 8 of the *Refugee Act 1996*. In practice this translates to authorised officers of the Refugee Applications Commissioner as the vast majority of applications for asylum are made at the office of the Commissioner.<sup>56</sup> In the case of asylum decision-making at second instance, and if concerns are present regarding documentation or identity etc. under Section 16(6) of the *Refugee Act 1996*, the Refugee Appeals Tribunal may ask the Refugee Applications Commissioner to ‘make such further inquiries’ as necessary. ORAC has stated that they do not have an ‘overall formal process’ to check an applicant’s identity, and that it takes an applicant’s identity ‘as stated by the applicant’, employing further probing measures only in cases whereby it arises that there exists possible doubt as to the ‘bona fides of an applicant’s identity’.<sup>57</sup> The Minister for Justice and Equality has responsibility for dealing with subsidiary protection, and he and his staff will have access to an applicant’s file in which previous identity (including nationality) analysis will have been recorded by the Refugee Applications Commissioner and Refugee Appeals Tribunal. New information may also be provided or come to light at this stage; interviews with applicants do not take place but an applicant will be written to, with further information requested within a specific time limit.<sup>58</sup>

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<sup>56</sup> Office of the Refugee Applications Commissioner (November 2012).

<sup>57</sup> Office of the Refugee Applications Commissioner (September 2012).

<sup>58</sup> Interview with Department of Justice and Equality officials for the purpose of this focussed study (August 2012).

### *Authorities Engaged in Document Verification*

In the case of documentation verification, while some staff at ORAC have received basic training in document verification, the overall responsibility lies with An Garda Síochána. The Document & Handwriting Examination Section within the Garda Technical Bureau comprises of experts in several fields including the forensic examination of identity documents. Once an individual has been granted a protection status, as with all non-EEA nationals residing in Ireland for over three months, they will be required to register with the Garda National Immigration Bureau at which time a checking of documents will take place. This checking process relates to the overall credibility of the document and does not act as identity verification. Cross-border police cooperation is in evidence, including a recent initiative with Northern Ireland resulting in information that entry to Ireland was taking place via the Northern Ireland border of individuals whose entry to the UK had been arranged by a UK-based individual who subsequently accommodated them in the UK for several weeks while ‘schooling’ them on answering questions relevant to the Irish asylum process.<sup>59</sup>

### ***Which national authorities have the operational responsibility for establishing the identity of applicants for international protection who have to (be) forcibly return(ed) to their (presumed) country of origin?***

No specific authority has the operational responsibility for establishing the identity of applicants for international protection who have to be forcibly returned to their presumed country of origin, with the Garda National Immigration Bureau (GNIB) retaining overall operational responsibility. The Repatriation Unit within the Irish Naturalisation and Immigration Service (INIS) in the Department of Justice and Equality retains overall responsibility for organising return. The Repatriation Unit works with relevant embassies to establish the nationality of individuals due to be forcibly returned to their believed country of origin, and with An Garda Síochána regarding the checking of any documentation on file for the applicant.<sup>60</sup>

### ***Does your (Member) State have a central competence centre for issues related to the determination of identity and/or verification of documents?***

Yes. While various authorities may retain responsibility for issues related to the verification of documentation and building up of a case file at certain stages (see above), at all stages An Garda Síochána (and specifically the Document & Handwriting Examination Section within the Garda Technical Bureau) acts as a central competence centre for the verification of documentation.<sup>61</sup>

### ***If Yes, what issues does the centre cover***

- ***issues relating to the determination of identity in respect of the procedure for granting international protection OR in respect of the***

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<sup>59</sup> *Ibid.*

<sup>60</sup> *Ibid.*

<sup>61</sup> *Ibid.*

*procedure for executing the return of rejected applicants) OR in respect of both of these procedures*

No. Only the authenticity of documentation is covered, as required.<sup>62</sup>

- *issues relating to the verification of documents in respect of the procedure for granting international protection OR in respect of the procedure for executing the return of rejected applicants OR in respect of both of these procedures*

In both procedures the Garda Document & Handwriting Examination Section acts as a central competence centre for the verification of all documentation.

**If Yes**

- *Has the centre developed its own database / reference base for<sup>63</sup>*
  - *genuine documents?*  
Yes. It obtains specimens through the EU False Documents Working Group and through the Irish embassies network.
  - *false documents?*  
Yes. These are kept for comparison and training purposes.
- *Does it make use of the database iFADO (iPRADO)<sup>64</sup> for checking false ID documents?*  
Yes. Members of An Garda Síochána have access to iFADO.<sup>65</sup>
- *Does it make use of the EDISON<sup>66</sup> system?*  
Yes. Members of An Garda Síochána have access to EDISON.<sup>67</sup>
- *Does its tasks involve*
  - *Advisory services?*  
Yes. To An Garda Síochána and other Government agencies.
  - *Development of Methods?*  
Yes. Through the European Document Experts Working Group (EDEWG) and ISO accreditation.
  - *Training of frontline officers?*  
Yes. The Document & Handwriting Examination Section is in possession of FRONTEX training tools for frontline officers.
  - *Support with difficult cases?*

<sup>62</sup> *Ibid.*

<sup>63</sup> All responses in this sub-section are provided by An Garda Síochána (November 2012) unless otherwise noted.

<sup>64</sup> PRADO Public register of authentic identity and travel documents online.

<sup>65</sup> Irish Naturalisation and Immigration Service (October 2012).

<sup>66</sup> EDISON Travel Documents System.

<sup>67</sup> Irish Naturalisation and Immigration Service (October 2012).



Yes. For An Garda Síochána, other Government agencies and the judiciary.

- ***Does it have a forensic document unit?***

Yes. With trained Forensic Document Examiners.

***If No, i.e. your (Member) State does not have a central competence centre, what other institutions / systems are available to provide advisory services/other forms of support to officials responsible for establishing the identity of applicants for international protection?***

Other institutions that provide advisory support to officials in establishing the identity of applicants for refugee status include the Refugee Documentation Centre<sup>68</sup> (in cases of country of origin information) and the Social Work Team for Separated Children Seeking Asylum (in cases concerning unaccompanied minors). The Social Work Team for Separated Children Seeking Asylum is based within the Health Service Executive (HSE) and can assist with family tracing, however on a limited basis and with limited results.

In addition, the Irish Asylum and Immigration Strategic Information System (AISIP) allows for the checking of previous applications for refugee or other immigration statuses. More than 20 stand-alone IT systems involving 69 separate types of applications and transactions are combined, with over 800,000 separate transactions recorded in any year.<sup>69</sup>

***Are the officials responsible for determining the identity of applicants for international protection authorised to access EU databases holding identity information about Third Country Nationals (e.g. EURODAC, SIS II, VIS, etc.)?***

Yes. EURODAC is used by officials working in the area of refugee status determination, primarily in relation to transfers under the Dublin Regulation. EURODAC is used to ascertain whether an application has been submitted in another EU Member State by an applicant by virtue of a 'hit' via matching fingerprints; the actual identity of the applicant is not established. In cases, even when a 'hit' of fingerprints is found on the EURODAC system, a different identity (and nationality) is often recorded. In the Irish case, contact with the UK is most frequent. In cases whereby a return to another Member State cannot take place, the issue of multiple identities and nationalities can be raised with the applicant under their substantive 'Section 11' interview at ORAC.

SIS II is available to officials working in the area of international protection determination. However, limited use is made of this as it deals primarily with criminal offences rather than immigration matters. In theory, information discovered on the SIS II database can be raised with an applicant for refugee status determination under their 'Section 11' interview at ORAC.

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<sup>68</sup> <http://www.legalaidboard.ie/lab/publishing.nsf/Content/RDC>.

<sup>69</sup> Dáil Éireann Debate (17 January 2012).



Ireland does not participate in the VIS.<sup>70</sup>

Officials working in the area of international protection also maintain bilateral cooperation with authorities in other countries to access other relevant information. ORAC has noted that their 'emphasis on the use of the EU Dublin II Regulation continued to take into account visa or other residence histories where possible, not captured by the EURODAC fingerprinting system, and as provided for in EU law', and that this resulted in 'the detection of applicants who, having obtained a visa for another Contracting State to the Regulation, entered Ireland to make an asylum application while claiming to have no identity or travel documents. This gave rise to a greater proportion of determinations coming from visa or residence histories.'<sup>71</sup>

***If No, are the officials responsible for determining the identity of applicants for international protection authorised to liaise directly with the officials who do have access to these databases?***

ORAC has stated that its officials are not responsible for determining the identity of applicants for refugee status.<sup>72</sup>

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<sup>70</sup> Interview with Department of Justice and Equality officials for the purpose of this focussed study (August 2012).

<sup>71</sup> Office of the Refugee Applications Commissioner (2011). *Annual Report 2010*. Available at [www.orac.ie](http://www.orac.ie). See also Office of the Refugee Applications Commissioner (2012). *Annual Report 2011*. Available at [www.orac.ie](http://www.orac.ie).

<sup>72</sup> Office of the Refugee Applications Commissioner (September 2012).

# Section 2

## Methods for Establishing Identity

### 2.1 DEFINITION AND DOCUMENTS REQUIRED FOR ESTABLISHING IDENTITY

*What definition (if any) of identity is used with regard to (a) applicants for international protection and (b) for the return process.*

No explicit definition of identity is provided in either international protection or the forced return process legislation.<sup>73</sup>

*What types of documents and other information do authorities in your (Member) State accept as (contributing to) establishing the identity for applicants of international protection? For example:*

- *Official travel documents: Passports, ID cards;*
- *Other documents: birth certificates, divorce certificates, marriage licences, qualification certificates, etc.*

*Where possible, please indicate whether copies are accepted by relevant authority(ies) and which type of documents are considered by the national authorities as core or supporting documents. Also indicate the major issues faced concerning determining the veracity (or genuineness) of documents.*

Accepted 'core' documentation for establishing nationality and identity are valid passports or other equivalent biometric identification documents.<sup>74</sup> Other documentation such as birth and divorce certificates, marriage licences and other certificates such as qualification certificates, trade union cards and supporting letters, are considered as contributing towards building up an individual's identity. Copies of all documents are considered only as supporting an applicant's case and stated identity.<sup>75</sup>

A list of identity documents is contained with Section 20 of the *Refugee Act 1996 (as amended)* and detailed above. However, it must be noted that this is not an exhaustive list with regard to what constitutes an identity document per se, but rather it relates to offences such as the altering or forging of documents.<sup>76</sup>

<sup>73</sup> Section 20 of the *Refugee Act 1996 (as amended)* (which provides for the prohibition of false information and alteration of identity documents) defines 'identity documents' as including 'a passport, visa, national identity card, driving licence, birth certificate, marriage certificate or any other document establishing a person's nationality or identity purporting to be issued by or behalf of a local or national authority of any country or by an organ or agency of the United Nations'.

<sup>74</sup> Interview with Department of Justice and Equality officials for the purpose of this focussed study (August 2012).

<sup>75</sup> *Ibid.*

<sup>76</sup> Office of the Refugee Applications Commissioner (September 2012).

Section 11(1) of the *Immigration Act 2004* states that ‘Every person (other than a person under the age of 16 years) landing in the State shall be in possession of a valid passport or other equivalent document, issued by or on behalf of an authority recognised by the Government, which establishes his or her identity and nationality’, with Section 11(3) stating that any person who contravenes this Section shall be guilty of an offence.<sup>77</sup> Section 12(1)(a) provides that a ‘valid passport or other equivalent document, issued by or on behalf of an authority recognised by the Government, which establishes his or her identity and nationality’ shall be produced by a non-Irish national on demand by the Minister for Justice and Equality, any immigration officer or member of An Garda Síochána for the purpose of establishing that the presence in the State of the non-national concerned is not in contravention of Section 5’. A 2011 judgment however found that Section 12 of the Immigration Act was inconsistent with Articles 38.1 and 40.4.1 of the Irish Constitution and it was later amended.<sup>78</sup> Section 5 provides that no non-national may be in the State other than in accordance with permission, inter alia, under Section 4 of the Act. Section 4(3)(g) states that permission to land in the State may be refused in the absence of the same documentation, with Section 7(3) of the same Act relating to the need for a non-Irish national to declare whether they are carrying and to produce any documents as well as providing for the searching of the person and their luggage for any documents including:

- (i) any written matter,
- (ii) any photograph,
- (iii) any currency notes or counterfeit currency notes,
- (iv) any information in non-legible form that is capable of being converted into legible form, or
- (v) any audio or video recording.

Section 9(2)(a) of the 2004 Act relates to registration of non-Irish nationals with permission to be in Ireland with individuals required to ‘produce to the registration officer a valid passport or other equivalent document, issued by or on behalf of an authority recognised by the Government, which establishes his or her identity and nationality’.<sup>79</sup>

Government officials interviewed for the purpose of this study noted that there is an overall difficulty in authenticating documents without biometric data, with documents such as birth certificates and driver’s licences considered easily falsified. In addition, non-biometric documents may be genuine but the information can be false or forged.<sup>80</sup>

***What types of documents are accepted by national authorities in the (presumed) countries of origin if those applicants for international protection***

<sup>77</sup> Section 11(4) excludes any person (other than a non-Irish national) coming from or embarking for a place in the State, Great Britain or Northern Ireland.

<sup>78</sup> *E.D. v Director of Public Prosecutions* [2010] IEHC 110.

<sup>79</sup> Exclusions apply in certain sections such as persons under 16 years.

<sup>80</sup> Interview with Department of Justice and Equality officials for the purpose of this focussed study (August 2012).

*have to be returned, because they have received a negative decision, exhausted or abandoned the procedure? Please illustrate any differences between the documents accepted by the authorities of the (presumed) countries of origin and the documents accepted by the relevant authorities of your (Member) State.*

In the context of forced return, officials have stated that interviews<sup>81</sup> with the embassy of the (presumed) country of nationality may take place, with Irish authorities providing supporting documentation as on file and submitted by the applicant.<sup>82</sup> The determination of whether a rejected applicant is a national of a country is usually not taken on the basis of documentation alone. An embassy may accept some supporting documentation which is not accepted by Irish authorities e.g. trade union documents, on the basis that they will be able to verify the authenticity. An embassy will then be able to verify the information which the applicant provided, although in many cases this relates to nationality and not explicit identity confirmation. In cases whereby a national passport has been submitted by the individual pre-forced return, a verification check will generally be undertaken by an embassy.<sup>83</sup>

## 2.2 METHODS USED IN THE ABSENCE OF DOCUMENTARY EVIDENCE OF IDENTITY

*The aim of this section is to investigate, for cases where aspects of the applicant's statements regarding his/her identity are not supported by documentary evidence, which methods are used by the competent authorities in the (Member) State to check the credibility of the applicant's statements. In the boxes below, a list of methods is provided. For each method listed, please indicate*

- (a) whether it is used within the framework of the procedure for international protection and/or the procedure to forcibly return rejected applicants, or have exhausted or abandoned the procedure for international protection;*
- (b) whether the method is obligatory (i.e. enshrined in law), whether it is part of standard practice (i.e. used in most cases but not enshrined in law) or whether it is optional (i.e. not enshrined in law and used in some cases only). The rationale for selecting some methods as obligatory or optional may relate to national legislation, outlined in Section 1.2 (which the (Member) State can refer to in their replies);*

No particular methods to investigate aspects of an individual's identity are enshrined as obligatory in national law.

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<sup>81</sup> Either in person or by telephone.

<sup>82</sup> As the rejected applicant is no longer within the international protection process. Interview with Department of Justice and Equality officials for the purpose of this focussed study (August 2012).

<sup>83</sup> Interview with Department of Justice and Equality officials for the purpose of this focussed study (August 2012).

***Do national authorities make use of******(i) Language analysis to determine probable country and/or region of origin?***

- ***Applicants for international protection***

Yes. Authorities have stated that this is occasionally used in selective cases by ORAC for certain countries whereby historical investigations may have indicated high rates of individuals from a neighbouring country claiming that nationality. Other applications may be sent for language analysis on a case-by-case basis and dependent on emerging concerns.<sup>84</sup>

The ORAC *Annual Report 2009* outlined a project which took place during that year to progress the applications of a large number of Somali applicants and entailed inviting applicants for language analysis interviews in order to determine whether an applicant could be placed in the geographical/linguistic area that they claimed to be from. The interview involved the applicant speaking by telephone with a language analyst, with the recording then analysed by a team of ‘analysts and a linguist’. ORAC stated that ‘if the language analysis report indicates that the person is not from the area they claim to be, this becomes a credibility issue for exploration at substantive interview’. In the case of some 104 applicants who specified Somalia as their country of origin, following investigation, 61 per cent were found to have applied for visas in the United Kingdom under a different nationality. Nationalities revealed by investigation were Tanzanian, Kenyan, Yemeni, Ethiopian and Djibouti. In addition, a small number of the applicants had previously been granted UK nationality prior to an application in Ireland.<sup>85</sup> Criticism has taken place both in judicial review cases and by NGOs of the reliability of methods, of certain language laboratories and of the role of language analysis in the assessment of refugee claims.<sup>86</sup>

- ***Return of rejected applicants for international protection***

No. Authorities have stated that there is no standard use of language analysis in the determining of probable country of origin for the return of rejected applicants for international protection.<sup>87</sup> However, officials have access to the entire history of an individual’s file in which language analysis may have taken place at an earlier juncture within the protection process.<sup>88</sup>

***(ii) Age assessment to determine probable age***

- ***Applicants for international protection***

In the case of unaccompanied minors presenting at a port of entry, age assessment interviews are conducted by an immigration officer with an interpreter present or by telephone. Basic questions are asked on topics such as

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<sup>84</sup> *Ibid.*

<sup>85</sup> Office of the Refugee Applications Commissioner (2010). *Annual Report 2009*. Available at [www.orac.ie](http://www.orac.ie).

<sup>86</sup> Immigrant Council of Ireland (September 2012).

<sup>87</sup> Interview with Department of Justice and Equality officials for the purpose of this focussed study (August 2012).

<sup>88</sup> Governmental officials interviewed for the purpose of this focussed study noted that interviews (whether in person or by telephone) are generally conducted by the person’s presumed embassy. Interview with Department of Justice and Equality officials for the purpose of this focussed study (August 2012).

school, the reason for travel, age of siblings etc. while taking account of the maturity of the individual.<sup>89</sup> The decision is open to reassessment by an immigration officer at a later stage in conjunction with the Health Service Executive (HSE). In the case of applicants for international protection, Section 8(5)(c) of the *Refugee Act 1996 (as amended)* provides for the informing of the HSE and application of the *Child Care Act 1991* in cases where it appears to an Immigration Officer or authorised officer that an individual is under 18 years. In Ireland, interviews (by social workers, immigration officers and ORAC officials) and age assessment tools are used to assess age. No bone testing is currently provided for although it was in evidence in the past. Social work teams assess an unaccompanied minor's age when a minor enters State care by using a social work assessment tool.<sup>90</sup>

ORAC has stated that it forms an opinion as to the age of an unaccompanied minor applying for asylum via a specific interview for assessing age, with officers in receipt of training for this purpose.<sup>91</sup> In cases of age dispute the asylum applicant has the right to a review of his or her age assessment by a more senior officer in ORAC. In such cases the Refugee Legal Service will advise clients to get independent opinions for example from a doctor or social worker or documents from the country of origin to support their claim. In practice there is a large degree of consensus between ORAC and the HSE on this matter. In all cases, an inter-agency decision is taken regarding disputed age status decisions. If the authorities cannot agree on a precise age the final benefit of the doubt is given to the individual concerned.<sup>92</sup>

- ***Return of rejected applicants for international protection***

Unaccompanied minors who are rejected applicants for international protection are not deported from Ireland.<sup>93</sup> However in the case of minors as part of a family grouping, reference to the individual's file will be made, with age determination by the HSE and ORAC accepted.<sup>94</sup>

***(iii) Fingerprints for comparison with National and European databases***

- ***National Database***
  - ***Applicants for international protection***  
Information is not available on this area.
  - ***Return of rejected applicants for international protection***  
Information is not available on this area.

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<sup>89</sup> Joyce and Quinn (2009). *Policies on Unaccompanied Minors in Ireland*. Available at [www.emn.ie](http://www.emn.ie) and [www.esri.ie](http://www.esri.ie).

<sup>90</sup> *Ibid.*

<sup>91</sup> Office of the Refugee Applications Commissioner (November 2012).

<sup>92</sup> *Ibid.*

<sup>93</sup> Interview with Department of Justice and Equality officials for the purpose of this focussed study (August 2012).

<sup>94</sup> *Ibid.*

- **European databases**
  - **Applicants for international protection**

The taking of fingerprints for all applicants for international protection takes place for the purposes of EURODAC only. Provisions are made under Section 9A of the *Refugee Act 1996 (as amended)* and individuals under the age of 14 years are only taken in the presence of a parent or person acting in loco parentis or an employee of the HSE if an application has been made on behalf of an unaccompanied minor. Section 9(8)(c) of the *Refugee Act 1996 (as amended)* will be inferred when an applicant refuses to permit their fingerprints to be taken and establish their ‘true identity’ under a duty to cooperate.

Authorities have stated that checking of data with that of the UK visa system is in operation by ORAC in accordance with EU law under Article 21 of the Dublin Regulation.<sup>95</sup> In cases of a match, this information is put forth to an applicant during the course of their asylum interviews. Officials have noted matches related to an individual entering the UK on a genuine passport; information can then be verified as to identity and nationality.<sup>96</sup>

- **Return of rejected applicants for international protection**

Information is not available on this area.

**(iv) Photograph for comparison with National and European databases**

- **National Database**
  - **Applicants for international protection**

Yes. Authorities have noted that all asylum applicants are photographed as per standard practice and provided with a ‘Temporary Registration Certificate/Card’ which contains a person’s photograph and is evidence that they have applied for asylum.<sup>97</sup> It does not constitute an identity card and is noted as such.

- **Return of rejected applicants for international protection**

No. Authorities have stated that photographs of rejected applicants for international protection pre-forced return are not taken automatically unless it concerns a criminal issue. In the case of an embassy conducting a phone interview, a photograph will be supplied.<sup>98</sup>

- **European databases**
  - **Applicants for international protection**

No. Authorities have stated that this is not in operation in the Irish context.<sup>99</sup>

<sup>95</sup> Office of the Refugee Applications Commissioner (November 2012).

<sup>96</sup> Interview with Department of Justice and Equality officials for the purpose of this focussed study (August 2012). See also statistics in Section 1.2.

<sup>97</sup> [www.orac.ie](http://www.orac.ie).

<sup>98</sup> Interview with Department of Justice and Equality officials for the purpose of this focussed study (August 2012).

<sup>99</sup> *Ibid.*

- ***Return of rejected applicants for international protection***

No. Authorities have stated that this is not in operation in the Irish context.<sup>100</sup>

**(v) *Iris scans for comparison with National and European databases***

Authorities have stated that in all instances, iris scans do not take place but are currently under consideration by An Garda Síochána.<sup>101</sup>

- ***National Database***

- ***Applicants for international protection***

No. Authorities have stated that this is not in operation in the Irish context.<sup>102</sup>

- ***Return of rejected applicants for international protection***

No. Authorities have stated that this is not in operation in the Irish context.<sup>103</sup>

- ***European databases***

- ***Applicants for international protection***

No.<sup>104</sup>

- ***Return of rejected applicants for international protection***

No.<sup>105</sup>

**(vi) *DNA analysis***

- ***Applicants for international protection***

No. Authorities stated that DNA analysis is not routinely used in the case of applicants for international protection. It has been used predominantly in cases whereby minors are subsequently added to asylum applications and a verification of their relationship to the family unit is required.<sup>106</sup> If any concerns are present regarding the best interests of the child in such a situation, the HSE will undertake DNA analysis.

- ***Return of rejected applicants for international protection***

No. Authorities stated that DNA analysis of applicants refused asylum, pre-forced return rarely takes place, and primarily in the case of Irish-born children paternity links post-Zambrano ECJ ruling. In this instance, DNA testing is carried out by an approved agency and the burden of proof is on the parent.<sup>107</sup>

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<sup>100</sup> Interview with Department of Justice and Equality officials for the purpose of this focussed study (August 2012).

<sup>101</sup> *Ibid.*

<sup>102</sup> *Ibid.*

<sup>103</sup> *Ibid.*

<sup>104</sup> *Ibid.*

<sup>105</sup> *Ibid.*

<sup>106</sup> *Ibid.* Cited cases included that of children listed on several different asylum applications.

<sup>107</sup> Interview with Department of Justice and Equality officials for the purpose of this focussed study (August 2012).



***(vii) Interviews to determine probable country and or region of origin (or other elements of identity, such as faith and ethnicity)***

- ***Applicants for international protection***

Yes. Interviews of applicants for asylum are carried out as standard practice under Sections 8 and 11 of the *Refugee Act 1996 (as amended)* and may determine a probable country of origin. These interviews are with a view to determining the test under Section 2 of the *Refugee Act 1996 (as amended)*. Decision-makers, in this context, must make a finding regarding nationality or, in the alternative, country of habitual residence.

- ***Return of rejected applicants for international protection***

No. Authorities have stated that interviews of rejected applicants for international protection pre-forced return do not take place as standard practice, however an individual's (presumed) embassy will usually take place in order to determine nationality and/or identity.<sup>108</sup>

***(viii) Other (please describe, e.g. type of cooperation with or contacts in Third Countries), related to***

- ***Applicants for international protection***

No.<sup>109</sup>

- ***Return of rejected applicants for international protection***

No.<sup>110</sup>

***If possible, outline briefly the rationale behind the method(s) indicated above used in your (Member) State, e.g. why some method(s) been used in preference to others, is there a hierarchy or order of methods followed, any research conducted providing evidence of the method's reliability.***

Information is not available on this area.

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<sup>108</sup> *Ibid.*

<sup>109</sup> *Ibid.*

<sup>110</sup> *Ibid.*

# Section 3

## Decision-Making Process

### 3.1 STATUS AND WEIGHT OF DIFFERENT METHODS TO DETERMINE IDENTITY

*On the basis of the information gathered by the methods outlined in Section 2, how then is a decision on identification made, e.g. are some methods given more weight on their reliability than others; does there need to be consistency between the results from some of the methods used? Briefly outline whether the results from the different methods will have different status and/or will be given different weights, and whether this is laid down in legislation, policy or practice guidelines.*

As discussed earlier, an applicant’s credibility in an international protection case is seen as central to the consideration of a refugee status claim. This ‘credibility’ aspect is not restricted to identity verification (whether related to an individual’s identification details or aspects such as nationality, religion, ethnic grouping etc.) or document authentication. Section 11B of the *Refugee Act 1996 (as amended)* refers to the overall ‘credibility’ of an applicant including their provision of identity documents (or reasonable explanation for destroying, disposing and forging of such), travel history, place/timing of an application for asylum and incidence of manifestly false information. The weighting of various methods of identity verification are not clear nor are any legislation, policy or practice guidelines in use for such.<sup>111</sup> The benefit of the doubt is provided to applicants regarding their identity and/or nationality in the absence of conflicting, and presence of supporting, information.

In the case of a forced return of a rejected applicant for asylum, authorities have stated that a (presumed) embassy interview will usually take place in order for a country to accept the return of an individual and to issue a travel document. A decision regarding the verification of nationality (if not identity) is generally taken by the relevant embassy during this course of events.<sup>112</sup>

*Is a “grading” structure or spectrum used to denote the degree of identity determination (e.g. from “undocumented,” over “sufficiently substantiated” or “has the benefit of doubt” to “fully documented and verified”)? If Yes, outline what this is.*

<sup>111</sup> Interview with Department of Justice and Equality officials for the purpose of this focussed study (August 2012).

<sup>112</sup> *Ibid.*

As discussed earlier, a valid passport or equivalent biometric document relating to the identity of an individual is the sole documentation accepted as establishing the ‘identity’ of an applicant for authorities. Authorities have stated that a ‘grading’ structure is not in formal existence. Documents submitted by an applicant for asylum are registered as supporting evidence of ‘stated’ nationality unless proven otherwise.<sup>113</sup>

In the case of a forced return of a rejected applicant for international protection, no formal grading structure is in evidence either. However, the nationality of an individual must be verified by a (presumed) embassy in order for a travel document to be confirmed and/or issued. Section 5 of the *Refugee Act 1996 (as amended)* provides for the principle of *non-refoulement*. In cases whereby a confirmation of nationality cannot take place, a rejected applicant will generally be granted leave to remain temporarily in Ireland.<sup>114</sup>

*Are any future measures considered with regard to setting up or further elaborating a “grading” structure? If Yes, outline what these are.*

Governmental officials interviewed for the purpose of this focussed study did not indicate any future plans regarding introduction of a ‘grading’ structure.

## 3.2 DECISIONS TAKEN BY COMPETENT AUTHORITIES ON BASIS OF OUTCOMES OF IDENTITY ESTABLISHMENT

### 3.2.1 For the Consideration of the Application for International Protection

*What are the potential decisions that can be taken by the competent authorities where identity has been established (even partially) to inform the overall decision taken? For example, does the outcome of identity establishment influence a recommendation to “grant international protection,” “refuse international protection,” “defer decision”?*

As referenced earlier, authorities have stated that the granting or refusal of an international protection status in Ireland is not based solely on an establishment of identity. Rather, such verification is generally viewed as part of the ‘holistic assessment’<sup>115</sup> of an application and as part of an applicant’s overall credibility.<sup>116</sup> Certain decisions may be taken to declare a positive international protection status in cases whereby serious concerns surrounding an applicant’s core identity exist (such as name or age) but an assessment of serious risk (based on presumed nationality or religion) remains.

*How important is establishing identity relative to other factors used in making an overall decision? For example, if identity cannot be established, does this de*

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<sup>113</sup> Interview with Department of Justice and Equality officials for the purpose of this focussed study (August 2012).

<sup>114</sup> *Ibid.*

<sup>115</sup> *Ibid.*

<sup>116</sup> *Ibid.*

*facto lead to a rejected decision? Are other factors such as gender, suspected country of origin, given more weighting than identity determination in some cases?*

No specific weighting is attached to the establishment of an applicant's identity or other factors. However, the requirement for identity establishment in a case does not apply equally in all protection cases or decisions and rather varies according to the specificities of an individual's case. The weighting of other factors can be particularly seen in cases whereby granting of a status may take place based on nationality or country of origin.

### **3.2.2 For the Return to Country of Origin**

*What are the potential decisions that can be taken by the competent authorities where identity has been established (even partially) to inform the overall decision taken? For example, does the outcome of identity establishment influence a recommendation to "defer return"?*

Authorities have stated that in order to adhere to international obligations regarding the practice of *non-refoulement*, establishment of an individual's nationality (if not identity) is required for decision-making in forced return cases. In cases related to a forced return and where the Zambrano European Court of Justice (ECJ) judgment may apply, a return decision can only be deferred following verifiable DNA evidence.<sup>117</sup> Constitutional rights are also to be considered whenever a link to an Irish citizen child is claimed.<sup>118</sup>

*Are the results of the work to establish identity during the international protection process available for work to prepare for forced return?*

Yes. Authorities have noted that a full case file is available to officials working to establish the identity of a rejected applicant pre-forced return.<sup>119</sup>

*If 'yes': please describe the type of supplementary steps that may be needed with respect to identity documentation before the authorities in the receiving country are prepared to accept the return.*

As referenced earlier, authorities have noted that all relevant documentation (as determined by officials and members of the Garda National Immigration Bureau [GNIB] working on the case) on file is shared with the (presumed) embassy of the rejected applicant. Verification of passports takes place in instances, with travel documentation from the relevant embassy required in the majority of cases.<sup>120</sup>

*If 'no': please describe the type of steps that may be needed with respect to identity documentation before the authorities in the receiving country are prepared to accept the return.*

Not applicable.

<sup>117</sup> Interview with Department of Justice and Equality officials for the purpose of this focussed study (August 2012).

<sup>118</sup> Such as *E.A & Anor. v Minister for Justice & Anor* [2012] IEHC 371.

<sup>119</sup> Interview with Department of Justice and Equality officials for the purpose of this focussed study (August 2012).

<sup>120</sup> *Ibid.*

# Section 4

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## Conclusion

1. Neither EU *acquis* nor Irish legislation contains an explicit definition of 'identity'. It can be seen to relate to a person's name and/or personal details, as well as that of wider identity attributes such as nationality, language, religion or ethnic group. In addition, the verification of documentation may be referred to.
2. Difficulties in the establishment of identity within the international protection and forced return context are acknowledged by Irish policymakers. In both processes, a lack of 'core' identity documentation (whether presented by an applicant or in their possession) is considered the main challenge by authorities, although falsified documentation is also an issue. Authorities have stated that the majority of applicants for international protection do not submit any identity documents as part of their international protection claim; others have been found to be forged, tampered with or belonging to another person.<sup>121</sup>
3. Accepted core documentation for establishing nationality and identity are valid passports or other equivalent biometric identification documents.<sup>122</sup> Other documentation such as birth and divorce certificates, marriage licences and other certificates such as qualification certificates, trade union cards and supporting letters, are considered as contributing towards building up an individual's identity. Copies of all documents are considered only as supporting an applicant's case and stated identity.<sup>123</sup>
4. The use of data-matching systems such as EURODAC. has enabled a higher detection rate of multiple identities.<sup>124</sup> In the Irish case, contact with the UK is most frequent. In cases whereby a return to another Member State cannot take place, the issue of multiple identities and nationalities can be raised with the applicant under their substantive 'Section 11' interview at ORAC. SIS II is available to officials working in the area of international protection

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<sup>121</sup> The Office of the Refugee Applications Commissioner *Annual Report 2011* states that 'many such applicants [who stated that they travelled by air to Ireland] produce no passport or other documentary evidence of their stated identity or nationality or any travel documents to show how they travelled to the State.' Available at [www.orac.ie](http://www.orac.ie).

<sup>122</sup> Interview with Department of Justice and Equality officials for the purpose of this focussed study (August 2012).

<sup>123</sup> *Ibid.*

<sup>124</sup> The emphasis by ORAC on the use of the Dublin Regulation now takes into account visa and/or other residence histories where possible, not captured by the EURODAC system, and as provided for in EU law under Article 21 of the Regulation. ORAC has stated that this has resulted in the 'detection of greater numbers' of applicants who have obtained a visa for another contracting state under the Regulation before entering Ireland and claiming asylum. (Office of the Refugee Applications Commissioner, September 2012).

determination, although limited use is made of this as it deals primarily with criminal offences. Bilateral cooperation with authorities in other countries takes place by protection authorities to access other relevant information; cross-border police cooperation is in evidence, including with Northern Ireland.

5. The weighting of credible documentation in the international protection process (particularly in asylum determination) is seen as part of a larger picture whereby establishment of identity is seen as part of a general credibility assessment. In both situations, the majority of applications do not necessarily see an individual's identity established but rather their nationality.<sup>125</sup> In the case of a forced return of a rejected applicant, the main identity-related difficulty relates to the acceptance of the individual's (suspected or believed) embassy to the return of an individual. Interviews with the individual's embassy usually take place whereby national officials may verify the nationality (and not necessarily the absolute identity) of the rejected applicant and provide with documentation if necessary. Irish authorities noted that particular complications occur in cases whereby an embassy does not confirm the stated or believed nationality of a rejected applicant prior to forced return.<sup>126</sup>
6. Comprehensive and reliable statistics on the issue are not available in the national context. Information regarding documentation submitted at first instance is recorded but it may range from a national passport to supporting letters or travel documentation. Additional information can become available at a later date but records will not allow for a reliable reading or analysis of data.
7. Interviews of applicants for asylum are carried out as standard practice under Sections 8 and 11 of the *Refugee Act 1996 (as amended)* and may determine a probable country of origin. In the context of forced return, interviews<sup>127</sup> with embassies of the (presumed) country of nationality take place, with Irish authorities providing supporting documentation as on file and submitted by the applicant.<sup>128</sup> Other practices used in Ireland include language analysis (primarily in the asylum determining process, and with notable debate on the issue by NGOs and academics), age assessments (no bone testing is currently in evidence), fingerprinting (for all applicants for refugee status over the age

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<sup>125</sup> Office of the Refugee Applications Commissioner (September 2012).

In the case of international protection, the Irish case law indicates that it is important to determine an asylum application in respect of the correct country of nationality. In *Gioshvilli v The Minister for Justice, Equality and Law Reform*, 31 January 2003, the High Court (Finlay Geoghegan J), in a decision granting leave for judicial review, held that in considering the asylum claim in relation to a country where the applicant resided (Russia), but not in relation to the applicant's country of nationality (Georgia), it was arguable that the decision-maker erred in law because the decision-makers consideration of the claim related to a country in respect of which the applicant could not claim nationality.

<sup>126</sup> Interview with Department of Justice and Equality officials for the purpose of this focussed study (August 2012).

<sup>127</sup> Either in person or by telephone.

<sup>128</sup> As the rejected applicant is no longer within the international protection process. Interview with Department of Justice and Equality officials for the purpose of this focussed study (August 2012).

of 14 years<sup>129</sup> and for the purposes of EURODAC only) and photographs (all asylum applicants are photographed as per standard practice and provided with a ‘Temporary Registration Certificate/Card’ which contains a person’s photograph and is evidence that they have applied for asylum.<sup>130</sup> Photographs of rejected applicants for international protection pre-forced return are not taken automatically unless it concerns a criminal issue.) DNA analysis is not routinely used in the case of applicants for international protection, and rarely takes place in the context of pre-forced return and then primarily in the case of Irish-born children paternity links post-Zambrano European Court of Justice (ECJ) ruling.

8. An Garda Síochána (and specifically the Garda Technical Bureau) acts as a central competence centre for the verification of documentation.<sup>131</sup> This checking process relates to the overall credibility of the document and does not act as a definitive identity verification.
9. All parties consulted for this focussed study noted that, in general, decision-making on applications for international protection in Ireland is not based solely on the successful establishment of identity but rather on the material facts presented by the applicant, together with other relevant information, which is used to build a ‘picture’ incorporating all aspects of an applicant’s case and credibility.<sup>132</sup> The extent, and the aspect, of cases whereby decision-making is centred on the establishment of an individual’s identity will vary according to the facts of the respective case. In addition, an individual may be deemed eligible for international protection in cases whereby aspects of their identity only has been established (such as nationality or religion) or where serious concerns have been raised regarding their identity. In the case of subsidiary protection determinations,<sup>133</sup> applicants may be granted a status based on nationality and risk regardless of a prior refusal of refugee status based on serious credibility findings including identity. The Irish Refugee Council has highlighted the role of identity, and that of documentary evidence and the burden and standard of proof, in asylum determination.
10. A significant number of rejected applicants for international protection cannot be returned to their country of origin due to the fact that measures used to establish identity are not always successful. In order to prevent *refoulement*, establishment of an individual’s nationality (if not identity) is required and generally taken by the relevant embassy.<sup>134</sup> In cases where the

<sup>129</sup> Provisions are made under Section 9A of the *Refugee Act 1996 (as amended)* and individuals under the age of 14 years are only taken in the presence of a parent or person acting in loco parentis or an employee of the HSE if an application has been made on behalf of an unaccompanied minor.

<sup>130</sup> [www.orac.ie](http://www.orac.ie).

<sup>131</sup> Interview with Department of Justice and Equality officials for the purpose of this focussed study (August 2012).

<sup>132</sup> *Ibid.*

<sup>133</sup> In Ireland, the hearing of a subsidiary protection claim occurs after that of refugee status.

<sup>134</sup> Interview with Department of Justice and Equality officials for the purpose of this focussed study (August 2012).

Zambrano ECJ judgment may apply, a return decision can only be deferred following verifiable DNA evidence.<sup>135</sup>

11. Authorities stated that it has proven difficult to establish the nationality of applicants from countries without a recognised functioning authority or where it is suspected that false documentation may be easily procured. It was also noted that in the latter case, applicants have often been found to have used 'genuine' documentation to travel to Ireland.<sup>136</sup> Irish authorities have noted that historically a high proportion of asylum applicants in the State came from Nigeria and Romania, which resulted in a building up of country expertise and knowledge regarding the establishment of nationality for these countries.<sup>137</sup>
12. No grading structure or explicit weighting is in evidence in the case of international protection cases. The benefit of the doubt is provided to applicants regarding their identity and/or nationality in the absence of conflicting, and presence of supporting, information. Certain decisions may be taken to declare a positive international protection status in cases whereby serious concerns surrounding an applicant's core identity exist (such as name or age) but an assessment of serious risk (based on believed nationality or religion) remains. The requirement for identity establishment in a case does not apply equally in all protection cases or decisions and rather varies according the specificities of an individual's case.

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<sup>135</sup> Interview with Department of Justice and Equality officials for the purpose of this focussed study (August 2012).

<sup>136</sup> *Ibid.*

<sup>137</sup> *Ibid.*



## Appendix 1 Definitions

EU *acquis* does not contain a definition of ‘identity’; no explicit definition of ‘identity’ exists in legislation in Ireland either. The determination of ‘identity’ can be seen to relate to a person’s name and/or personal details, as well as that of wider identity attributes such as nationality, language, religion, ethnic grouping etc. In addition, when speaking of the establishment of identity, the actual verification of documentation (such as a birth certificate or identity papers) may often be referred to. All such concepts can be involved during both the international protection and forced return process. Although each is a distinct concept, for the purpose of this focussed study reference will be given to all such terms under the umbrella of ‘identity’.

Definitions for an ‘application for international protection’ and a ‘Third Country National’ are sourced from the EMN *Asylum and Migration Glossary 2.0*.<sup>138</sup> An ‘application for international protection’ is defined as:

*‘In the EU context, a request made by a Third Country National or a stateless person for protection from a Member State, who can be understood to seek refugee status or subsidiary protection status, and who does not explicitly request another kind of protection, outside the scope of Directive 2004/83/EC (Qualification Directive), that can be applied for separately.’*

A ‘Third Country National’ is defined as:

*‘Any person who is not a citizen of the European Union within the meaning of Article 20(1) of the Treaty on the Functioning of the European Union and who is not a person enjoying the Union right to freedom of movement, as defined in Article 2(5) of the Schengen Borders Code.’*

A definition of ‘refugee status’ is as provided for in Article 2(e) of the recast *Qualification Directive 2011/95/EU* as:

*‘the recognition by a Member State of a Third Country National or a stateless person as a refugee’.*

A ‘refugee’ is defined as:

*‘a Third Country National who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country, or a stateless person, who, being outside of the country of former habitual residence for the same reasons as mentioned above, is unable or, owing to such fear, unwilling to return to it, and to whom Article 12 does not apply’.*

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<sup>138</sup> Available at [www.emn.europa.eu](http://www.emn.europa.eu).

A definition of 'subsidiary protection status' is taken from Article 2(g) of the recast *Qualification Directive 2011/95/EU* as:

*'the recognition by a Member State of a Third Country National or a stateless person as a person eligible for subsidiary protection'.*

Article 2 (f) includes the definition of a 'person eligible for subsidiary protection' as:

*'a Third Country National or a stateless person who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his or her country of origin, or in the case of a stateless person, to his or her country of his or her former habitual residence, would face a real risk of suffering serious harm, as defined in Article 15 and to whom Article 17 (1) and (2) does not apply, and is unable, or, owing to such risk, unwilling to avail himself or herself of the protection of that country'.*



European Migration Network

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