



EMN Ad-Hoc Query on Ad-hoc query on classification of information related to making and examining an application for international protection

Requested by Mantas JERSOVAS on 28th December 2016

Protection

Responses from Austria, Belgium, Blocked / Unknown, Croatia, Cyprus, Czech Republic, Estonia, Finland, Germany, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Netherlands, Poland, Slovak Republic, Slovenia, Spain, Sweden, United Kingdom, Norway (23 in total)

Disclaimer:

The following responses have been provided primarily for the purpose of information exchange among EMN NCPs in the framework of the EMN. The contributing EMN NCPs have provided, to the best of their knowledge, information that is up-to-date, objective and reliable. Note, however, that the information provided does not necessarily represent the official policy of an EMN NCPs' Member State.

Background information:

According to Article 30 of the directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), for the purposes of examining individual cases, Member States shall not, inter alia, disclose information regarding individual applications for international protection, or the fact that an application has been made, to the alleged actor(s) of persecution or serious harm. According to Article 48 of the same directive, Member States shall ensure that authorities implementing this Directive are bound by the confidentiality principle as defined in national law, in relation to any information they obtain in the course of their work. In order to implement those requirements, Lithuania national law provides that information related to making and examining an application for international protection shall be officially classified. Thus, most of the documents in the applicant's file are considered "official secret" with security classification "Restricted" applied. For a number of years now, however, there's an ongoing discussion on whether such classification of information provided by an applicant is reasonable and whether the goals of the directive 2013/32/EU can be achieved by the general principle of confidentiality and applicable rules on personal data protection. In light of this, we would kindly ask the Member States to answer the following questions by the 1st of February 2017:

Questions

1. 1) Is the information related to making and examining an application for international protection classified by your national law? If not, what general or specific legislative safeguards do you use in order comply with provisions of Art. 30 and 48 of the directive 2013/32/EU?
2. 2) If not, what general or specific legislative safeguards do you use in order comply with provisions of Art. 30 and 48 of the directive 2013/32/EU?

Responses

	Country	Wider Dissemination	Response
	Austria	Yes	1. No, information related to asylum proceedings is not specifically classified. However, under the Federal Constitutional Act, the authorities are generally bound by confidentiality, if this is "in the preponderant interest of the parties involved" (Art. 20 para 3). Further, according to Art. 33 Federal Office for Immigration and Asylum Procedures Act, the transmission of personal data on an alien to the country of origin is not admissible unless it involves data required to procure a replacement

			<p>travel document (para 3). The transmission of personal data on an asylum-seeker to the country of origin is in general not admissible. However, data required for the purpose of obtaining the necessary entry authorizations may be transmitted if the asylum application has been rejected – even if not finally – or the asylum-seeker is not accorded de facto protection against deportation. The fact that an application for international protection has been filed may under no circumstances emerge in the course of any such transmission (para 4).</p> <p>2. Please see Question 1 above.</p>
	Belgium	Yes	<p>1. Article 57/27 of the Belgian Immigration Act (Law of 15 December 1980) specifies that the Belgian central asylum authority, the Office of the Commissioner General for Refugees and Stateless Persons (CGRS) is bound by Article 458 of the penal code on professional secrecy. Article 57/27 stipulates some exceptions on the professional secrecy for the CGRS when it concerns information for security services, police, prosecutors or national investigation magistrates and international courts and the immigration office. However Article 57/27 of the Belgian Immigration Act stipulates that also these institutions are not allowed to: (a) disclose information regarding individual applications for international protection, or the fact that an application has been made, to the alleged actor(s) of persecution or serious harm; (b) obtain any information from the alleged actor(s) of persecution or serious harm in a manner that would result in such actor(s) being directly informed of the fact that an application has been made by the applicant in question, and would jeopardise the physical integrity of the applicant or his or her dependants, or the liberty and security of his or her family members still living in the country of origin.</p> <p>2. See answer to question 1</p>
	Blocked / Unknown	Yes	<p>1. France has transposed Article 30 of the Directive 2013/32/EU through the Law n°2015-925 of 29 July 2015 on the reform of asylum law by the adoption of Article L.723-10 of the Code on Entry and Residence of Foreigners and Right of Asylum (CESEDA). The French Office for the Protection of Refugees and Stateless Persons (OFPRA) shall not disclose information regarding individual applications for international protection, to the alleged actor of persecution or serious harm. France has transposed Article 48 of the Directive 2013/32/EU by the adoption of Article L.722-4 of the</p>

			<p>CESEDA. The OFPRA and its officers are bound by the confidentiality principle in relation to any information they obtain in the course of their work. Confidentiality is a principle of constitutional value in France.</p> <p>2. N/A</p>
	Croatia	Yes	<p>1. 1. Yes. According to the Article 19. of the Act on International and Temporary Protection (Official Gazette No. 70/2015) personal and other data collected during the procedure to approve international protection, especially the fact that an application has been lodged, constitute official, classified information, and may not be sent to the country of origin of an applicant, an asylee or a foreigner under subsidiary protection or to other bodies that are not involved in the procedure. Collection, processing and storage of data referred to in this Article shall be undertaken exclusively pursuant to the regulations governing the protection of personal data.</p> <p>2. 2. N/A.</p>
	Cyprus	Yes	<p>1. The information related to making and examining an application for international protection is not classified by our national law.</p> <p>2. In order to comply with provisions of art. 30 and 48 of the Directive 2013/32/EU, only the applicant or his/her lawyer are allowed to have access to the applicants' personal file. In addition to this, officers are not allowed to reveal any information related to applicants' personal file. According to the article 18(9) of the Refugee Law, both the fact of submission of an application, as well as any information related to an application, remain confidential and are in no case revealed to the authorities of the applicant's country of nationality or to any other actor of persecution. Nor any information about the applicant, which is requested from the country of nationality or other actor of persecution is revealed, in a way that would result in direct disclosure of the fact that the applicant has submitted an application, and to risk the physical integrity of the applicant and his dependants or the freedom or safety of members of his family still living at the country of nationality. Moreover, according to article 31B of the Refugee Law, any person who receives any kind of information while carrying out his duties under the Refugee Law is obliged not to reveal such information, unless – -by</p>

			<p>the written consent of the person from whom the information was received; or -for the purposes of proving or substantiating facts in a case pending before the court; or -for the purposes of implementation of the Refugee Law or international law or Community law; or -for the purposes of criminal investigation or criminal prosecution; or -for the purposes of public interest or for other administrative purpose, falling within the public interest. A person who contravenes or fails to comply with the aforementioned provisions commits a criminal offence and upon conviction is liable to imprisonment not exceeding three months or to a fine not exceeding a thousand pounds or to both such penalties.</p>
	Czech Republic	Yes	<p>1. No, the information is not classified under a special Act on Classified Information. See below.</p> <p>2. The Art. 19 of The Asylum Act regulates the Common provisions for a procedure concerning the international protection. There is a procedure established in accordance with the principle of confidentiality. This procedure means in practice that the alleged actors of persecution or serious harm cannot obtain in any way the information related to the application for international protection, to the applicants for international protection, to refugee or to person with subsidiary protection from the determining authority. In fact, that means that the possibility to examine the file is strictly limited. In this provision, Czech legislation is even beyond the requirements from the Directive and more stringent in relation to the Member States. Directive only prohibits to “disclose (directly) the information regarding individual applications for international protection“ to the alleged actors of persecution or serious harm. The Asylum Act prohibits the Ministry of the Interior and other relevant authorities „to provide/ disclose the information generally/ in any way.“</p>
	Estonia	Yes	<p>1. Most of the documents are classified as restricted access information according to Public Information Act section 35 subsection 1 points 12 and 19 and Act on Granting International Protection to Aliens section 13 subsection 3. Public Information Act: § 35. Grounds for classification of information as internal (1) A holder of information is required to classify the following as information intended for internal use: 12) information which contains personal data if enabling access to such information significantly breaches the inviolability of private life of the data subject; 19) any other information provided by law. Act on Granting International Protection to Aliens: § 13. Protection of information in proceedings concerning international protection and</p>

			<p>proceedings concerning of temporary protection (3) Information containing the personal data of applicants is classified as information intended for internal use. The processing of information containing the personal data of such aliens is permitted solely for the performance of duties prescribed by law.</p> <p>2. N/A</p>
+	Finland	Yes	<p>1. Yes, Finland has national legislation that stipulates that the information and documents regarding individual asylum seekers are classified. According to the Act on the Openness of Government Activities (621/1999) Section 24 — Secret official documents “(1) Unless specifically provided otherwise, the following official documents shall be secret: 24) documents concerning a refugee or a person seeking asylum, a residence permit or a visa, unless it is obvious that access will not compromise the safety of the refugee, the applicant or a person closely involved with them;” According to section 11 of the ”Act on the Register of Aliens” (1270/1997, unofficial translation of the name as the act is not translated into English) information and documents obtained to perform the duties of the Register of Aliens’ (duties: processing, decision-making and control of matters relating to the entry into and departure from Finland and residence of aliens in the country; ensuring the security of the state and for carrying out a basic security investigation and an extensive security investigation as referred to in the Act on Security Investigations; processing and decision-making of matters related to the acquisition, retention and loss of Finnish citizenship and the de-termination of the citizenship status) are classified by law or unless it is not evident that giving the information does not result in harm or damage to the Finnish international relations, international cooperation or to the applicant and his or her family. Furthermore Section 97b of the Aliens’ Act (301/2004) states that: “Acquisition of information on individual cases relating to international protection The authorities referred to in this Act may not obtain information on individual cases relating to international protection in a manner that would result in the actors of persecution or serious harm being informed of the case, thereby jeopardising the security of the person concerned or that of his or her family.”</p> <p>2. N/a</p>

	Germany	Yes	<p>1. In Germany, it was not necessary to implement the provisions of art. 30 and art. 48 Procedures Directive in national law, because the protection of personal data and the principle of confidentiality are essential elements of the national law. Protection of personal data is safeguarded in sect. 8 Asylum Act(Asylgesetz). Personal data could only be submitted to other authorities under strict conditions. The Principle of confidentiality is content of the Administrative Procedure Act (VerwaltungsverfahrenG),sect. 28 and sect. 30. The non public nature of the hearing (sect. 25 Asylum Act) is no specificity in view of the Administrative Procedure Act; it is only particularly emphasized, because applicants are exposed persons who need unlimited protection against publication.</p> <p>2. see answer 1)</p>
	Hungary	Yes	<p>1. 42. § Hungarian authority or court shall not enter into contact with a) the country of origin of the person seeking recognition, b) a country, in respect of which it may be presumed that it forwards information to the country of origin, c) a person or organisation, in respect of whom or which it may be presumed that s/he or it persecuted or would persecute the person seeking recognition or would forward information to the persecutors of the person seeking recognition, if, as a result of such entry into contact, the persecutors would become aware of the fact that the person seeking recognition submitted an application for recognition or if, as a consequence of such entry into contact, the person seeking recognition or a member of his/her family were exposed to a physical threat or the liberty or security of the family members of the person seeking recognition living in his/her country of origin were exposed to a threat. 81. § The refugee authority shall manage the personal details of refugees, beneficiaries of subsidiary and temporary protection and persons seeking recognition (hereinafter collectively referred to as “persons coming under the effect of the present Act”) and the data related to their stay, the provisions and benefits which they are entitled to as well as any changes therein in the refugee records for the purpose of a) establishment of the existence of the legal status of refugee, beneficiaries of subsidiary or temporary protection and providing the benefits which are attached thereto, b) establishment of the entitlement to the provisions and benefits determined in the present Act and in separate legal rule, c) identification, d) prevention of parallel procedures and e) establishment of the multiple submission of applications. 86. § The refugee authority may request data specified by law for the attendance of its responsibilities stipulated by law a) from the records</p>

			<p>related to persons who committed crime, are under forced measures and/or criminal procedure; b) from the central aliens police records; c) from the records of personal and residence data; d) based on an international treaties, legal acts of the European Community or reciprocity, from foreign crime investigation, aliens police and refugee agencies and international organisations. 87. § (1) For the purpose of fulfilling their responsibilities determined by law, the following agencies may request data specified by law from the records referred to in the present Chapter: a) court, b) public prosecutor's office, c) investigating authority, d) national security service, e) alien police authority, f) tax and customs authorities, g) expert authority involved in asylum procedure; h) authority proceeding in and Minister responsible for nationality cases, i) authority proceeding in cases related to the records of personal and residence data, j) labour authority, k) labour safety authority, l) state administration agency responsible for health care, m) registrar authority, n) guardianship authority and o) agencies disbursing benefits on the basis of a legal rule or contract. (1a) The Centre for Coordination against Organised Crime may request data from databases defined by the present Chapter in order to carry out risks analysis of passengers details. (2) By communicating the personal data stipulated by law of the natural person recognized as refugee or beneficiary of subsidiary protection, the refugee authority shall inform the local government office that is competent at the future place of residence in order to facilitate their inclusion into the personal and address registry, issuance of the necessary personal identification documents, personal identifier and authority residence card. (3) The data managed on the basis of the present Act may be used for statistical purposes and data may be supplied from the records containing such data for statistical purposes in a way which does not permit the identification of individuals. (4) The following data may be delivered to the Central Statistical Office in the interest of data management for statistical purposes also in a way which allows for the identification of individuals: a) from among data in Section 83(1)a): the surname and first name or names, the former surname and first name or names, place and date of birth, sex, the mother's surname and first names at birth, data related to the current and former nationality or stateless status, and b) data stipulated by Section 83(1) f), j)-l). (5) The data determined in Section 83(1)m) may only be delivered to the investigating authority and the public prosecutor's office and, as determined by law, to the court and the national security services. 87/A. § (1) In order to carry out its tasks arising from its contribution laid down in Section 31/A (10), the police shall process the following particulars of the person seeking recognition and subject to police cooperation: a) surname(s) and first name(s); b) surname(s) and first name(s) at birth; c) former</p>
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			<p>concerned. The person concerned shall be informed of the purpose of utilisation beforehand. (5) Within 30 days, the refugee authority shall provide information upon request by Member States of the European Union relevant to third country nationals holding an EC settlement permit, whether the person is a refugee or beneficiary of subsidiary protection in Hungary. (6) In order to implement a request under Section 34(10) of the Act II of 2007 on the entry and stay of third country nationals, the refugee authority shall inform the aliens policing authority, without delay, about the fact of recognition as refugee or beneficiary of subsidiary protection.</p> <p>2. See answer to question 1).</p>
	Ireland	No	
	Italy	Yes	<p>1. No. The information related to making and examining an application for international protection is not classified by Italian law.</p> <p>2. The Code of Conduct for the staff of the National Commission and the Territorial Commissions (Commissioni Territoriali, deciding about applies for international protection in Italy) for the recognition of international protection was adopted on 15 November 2016. In accordance to art. 5 paragraph 1 ter of Legislative Decree no. 25 of 2008 as amended and supplemented, the Code establishes the rules of conduct governing the professional and ethical responsibilities of presidents, members, supporting staff, interpreters and others who provide their activities (including those who provide their support free or on occasional basis), as part of the procedure implemented by the National Commission and Territorial commissions. In Italy there are also other specific safeguards used for ensuring the respect of the confidentiality principle. First of all, also in the Italian transposition law of Directive 2011/95/UE that is D.lgs. 251/2007, art. 32 foresees that the personnel of Territorial Commissions is obligated to respect the principle of confidentiality about the information about asylum seekers. With regard to Directive 2013/32, art. 25 comma 1 D.lgs. 25/2008 specifies that information must be collected without jeopardizing the asylum seekers. At the same time, the Decree (comma 2) specifies that the personnel of the Territorial Commissions cannot give information about the applicant that can damage his/her safety, the people who depend on him, or information that can damage the freedom and the safety of his family members who still live in</p>

			<p>their country of origin. Finally, art. 37 D.lgs. 25/2008 reiterates that all the people involved in the procedures have the duty of confidentiality regarding all the obtained information. Another rule about this topic is defined in art. 5 comma 6 of DPR 21/2015 stating that “during the interview with the applicants (that is a step of the procedure to define the apply) the Territorial Commission must adopt measures that guarantee the confidentiality of the conversation, the identity and the declarations of the applicants, also the vulnerable ones.</p>
	Latvia	Yes	<p>1. According to the Latvian Asylum Law the employees of institutions involved in the asylum procedure do not have the right to disclose information regarding an asylum seeker, including regarding the fact of submitting an application, except the cases when the relevant person has agreed thereto in writing or the information has been requested by a State or local government institution within the scope of its competence. Therefore most of the documents are classified as restricted access information.</p> <p>2. N/A</p>
	Lithuania	Yes	<p>1. Yes, Lithuania national law provides that information related to making and examining an application for international protection shall be classified. Thus, most of the documents in the applicant’s file are considered “official secret” with security classification “Restricted” applied.</p> <p>2. N/A</p>
	Luxembourg	Yes	<p>1. It is important to say that a document is considered as classified in Luxembourg if some special measures have been taken; a classified document can only be read by a person possessing a clearance. In Luxembourg the information related to asylum is considered as confidential. Luxembourg transposed the Directive n° 2013/32/EU into national law by law of 18 December 2015 on international protection and temporary protection. Article 25 of the Law of 18 December 2015 establishes that during the collection of information for the purposes of examining individual cases, the agents of the Minister in charge of asylum and immigration (Directorate of Immigration) disclose information regarding individual applications for international protection, or the fact that an application has been made, to the alleged actor(s) of persecution or serious harm in order to avoid</p>

			<p>that the physical integrity of the applicant or his or her dependents or the liberty and security of his or her family members, still living in the country of origin would be jeopardised.</p> <p>2. N/A</p>
	Netherlands	Yes	<p>1. The information related to an application for international protection is not classified by national law. The General Administrative Law Act contains a general article on confidentiality, which states: Article 2:5 1. Anyone involved in the performance of the duties of an administrative authority who in the process gains access to information which he knows, or should reasonably infer, to be of a confidential nature, and who is not already subject to a duty of secrecy by virtue of his office or profession or any statutory regulation, shall not disclose such information unless he is by statutory regulation obliged to do so or disclosure is necessary in consequence of his duties. 2. Subsection 1 shall also apply to institutions, and persons belonging to them or working for them, involved by an administrative authority in the performance of its duties, and to institutions and persons belonging to them or working for them performing a duty assigned to them by or pursuant to an Act of Parliament.</p> <p>2. See question 1</p>
	Poland	Yes	<p>1. Poland, differently as Lithuania, does not vest a confidentiality clause to selected documents gathered in the proceeding files concerning international protection.</p> <p>2. Instead of such a solution, Poland adopted a general prohibition to pass any information to the country of origin of the alien, which may suggest in the smallest that this person is applying for an international protection in Poland. Currently, this prohibition is expressed in Art. 9 of the Act on granting protection to aliens in the territory of the Republic of Poland, where: Article 9. Data of the alien on the basis of which it is possible to ascertain that: 1) whether the proceedings are still pending or have been completed: A) granting international protection or deprivation of refugee status or subsidiary protection, B) granting or depriving asylum against a foreigner, 2) the alien has been granted or has been denied refugee status, 3) the alien was granted or refused asylum, 4) the alien was granted or refused grant subsidiary protection - must not be made available or obtained</p>

			<p>from entities toward which there is reasonable presumptions that they commit acts of persecution or cause serious harm. In addition to that, according to the general rules of the Code of Administrative Proceedings, the proceeding files must not be made available to entities that do not have the status of party to the proceedings, which might also be treated as a general confidentiality clause for international protection proceedings. Moreover, contents of the Art. 9 during work on the previous amendment to the “Act on granting protection to aliens in the territory of the Republic of Poland” was consulted in detail with the Ministry of Foreign Affairs in order to implement fully the principle of the procedural directive, expressed in Art. 30.</p>
	Slovak Republic	Yes	<p>1. No, the information related to the lodging and examination of the asylum application is not classified by the Slovak law (specifically according to the Act 215/2004 Coll. on the Protection of Classified Information and on Amendments to Certain Acts).</p> <p>2. In order to comply with the requirements set in the Directive 2013/32/EU, specifically Articles 30 and 48, Slovak Republic uses as a legislative safeguard provisions on confidentiality of civil servants about facts which they learn about in connection with the performance of their duty according to the Act no. 400/2009 Coll. on Civil Service, provisions on confidentiality of employees conducting work in the public interest according to the Act no. 552/2003 Coll. on Performance of Work in the Public Interest as well provisions of the Act no. 480/2002 on Asylum and on Changes and Amendments of Some Acts. According to the Act on Asylum, during the asylum procedure and temporary protection procedure and period during which the international protection and temporary protection lasts, the Ministry of Interior of the Slovak Republic cannot -without the consent of the person concerned- provide to the country of origin his/her personal data, data about his/her place of stay, his/her images, register of fingerprints of the asylum seeker and other data when there is a well-founded fear of his/her persecution as well as when he/she is persecuted, when there is a serious risk of harm, conflict, violence, humanitarian catastrophe’s consequences or when there is constant or mass human rights violation in his/her country of origin. The Ministry of Interior of the Slovak Republic also cannot obtain information about foreigners from those who cause their persecution or serious harm in a way in which they can find out that these foreigners are beneficiaries of international protection in case of application based on the alleged persecution or serious harm. Among legal guarantees which are used in order to comply with the conditions set in the above</p>

			mentioned provisions are also provisions of the Act no. 211/2000 on Free Access to Information and on Amendments and Supplements to Certain Acts (Freedom of Information Act). The information related to personality and privacy of a person, documents, portraits, images and sound records related to the person or his/her personal expression is made available only if it is provided by law or only if the person concerned provides his/her written consent. Similarly, according to the Freedom of Information Act, the information is not made available if it is in contradiction with the legally binding acts of the European Communities and European Union or with an international treaty by which Slovak Republic is bound.
	Slovenia	Yes	<p>1. Under the International Protection Act (IPA) there is no specific classification. However, several national legislations (the IPA, Personal Data Protection Act, etc) define safeguards regarding the use of personal data in case of official procedures such as examination of information and data of the asylum procedure.</p> <p>2. Under the International Protection Act (Article 37) in case of information gathered by the personal interviews as part of asylum procedure public is always excluded. However, exclusion of the public shall not apply to legal and authorised representatives. At the explicit request of the person interviewed, another person may be present at his or her option for assistance or support. The public official conducting the personal interview may, in agreement with the person interviewed, allow a representative of the UNHCR, another public official or a competent authority's employee, as well as scientific workers, students and civil servants to be present at the interview if this is important for scientific work and the institution. Article 119 of the IPA also define that competent authority shall protect all personal information of applicants and persons granted international protection, especially from the authorities of the country of origin. The personal information of applicants and persons granted international protection shall be used only by authorised company or authority in order to issue legal status (refugee card, residence permit, etc.) Under the IPA this information must be destroyed in 30 days after it has been used.</p>
	Spain	Yes	<p>1. The information provided within the course of an administrative procedure (including the situation of a request for international protection) is not considered as “classified information”. Such category is reserved to pieces of information which pursuant to Ley 9/68, of April 5, on classified</p>

			<p>information, deal with State defense or security-pursuant to the act, classified information qualifies as “secret” and “restricted”.</p> <p>2. General provisions under Spanish administrative law (Act 39/2015, on administrative procedure, article 3 thereof) entail, as a general rule, limited access during the procedure to interested parties (i.e. actually or potentially affected by the decision to be taken). Pursuant to Transparency act (number 19/2013 of December 9), access to information by a third party once the administrative file is terminated strikes a balance between the interest of access and personal data protection. If data can be made available in an anonymous manner, they will be provided in all cases.</p>
	Sweden	Yes	<p>1. YES!</p> <p>2. NA</p>
	United Kingdom	Yes	<p>1. All information provided in support of an asylum claim is treated in confidence and in accordance with our obligations under the Data Protection Act 1998. This Act requires that personal data held is fairly and lawfully processed; adequate, relevant and not excessive; accurate; not kept longer than is necessary; processed in accordance with the rights of the individual; and kept secure. In the UK, asylum seekers are provided with information about the asylum process and their rights, including an assurance of confidentiality concerning the information provided to support their asylum claim. Our policy is clear that the UK will not inform the country of origin or alleged actor of persecution that they have made an asylum claim.</p> <p>2. N/A</p>
	Norway	Yes	<p>1. The information related to making and examining an application for international protection is not as such classified information according to the Security Act.</p> <p>2. All the documents relating to the asylum process are however, protected by the confidentiality principle as defined in national law (Act relating to procedure in cases concerning the public administration [Public Administration Act] Amended, most recently by Act of 1 August 2003 no. 86</p>

			Ministry of Foreign Affairs) - paragraph 13. In cases concerning national security there may be documents that are classified according to the Security Act but this is a concrete decision in each case and is not routine in all asylum cases.
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