

How do you appeal against a decision of the State Secretariat for Migration?

Have you received a negative decision from the State Secretariat for Migration (SEM)?

Contact lawyers or legal advice offices in your vicinity immediately if you wish for advice or want to write an appeal. They have been provided by www.refugeecouncil.ch, an organisation which is independent of the government and supports the rights of asylum seekers and refugees. Please read the instructions carefully and follow them step by step.

1. What you need to know

→ **only 1 appeal**

You can normally only appeal once. The Federal Administrative Court is in charge of processing the appeal. It is the highest court in the asylum procedure and its decision is final. The address:

[Bundesverwaltungsgericht](http://www.bundesverwaltungsgericht.ch)

Postfach, CH-9023 St. Gallen

T +41 (0)58 705 26 26, F +41 (0)58 705 29 80

→ **don't miss the deadline**

Please read carefully the information under section «Rechtsmittelbelehrung/voies de droit» on the last page of your decision. There are different decisions possible; they have different deadlines for the appeal:

1. **Rejected claim** (negative decision): You have to appeal this decision within **7 or 30 days**.
2. **Decision of non-admission**: Your asylum claim will not be processed further because it was considered manifestly unfounded or abusive. You have to appeal within **5 working days** (Saturday, Sunday and Swiss official holiday days do not count towards the deadline). Caution: Exception for extradition to a European country. The appeal has no suspensive effect!

To save time it is best initially to fax the appeal and to send the original by post later.

2. Ordering records

You will find substantiating your appeal easier if you have all the documents on which the decision of the State Secretariat for Migration is based at your disposal. Please request your asylum file at the State Secretariat for Migration (SEM) if you have not received it automatically. Order the records even if you have to submit the appeal within 24 hours. They may prove useful if you wish to make additions to your appeal later.

Use form **A**. Write straight onto the form where there is a ✍ symbol.

→ **Complete the form point by point:**

-
- 1** Personal details and current address (family name, first name, dates of birth of all people affected by the SEM's decision, street, postcode/town)

 - 2** Place, date

 - 3** N-number (the six-digit figure stated at the top left of the SEM 's decision)

 - 4** Date of the SEM's decision (stated at the top left of the SEM's decision)

 - 5** Sign the letter.

6 Send the form by registered post to the SEM (for the address see top right of the form).

A few days later you will receive copies of the interview records and other records if applicable. There is normally no charge for this service.

3. Preparing the appeal

→ **Are you receiving social security?**

If you are, please ask for a letter of confirmation from the social security office. You must enclose this with your appeal. Send the letter of confirmation as soon as possible after the appeal if you receive it after the deadline has expired.

→ **Get the SEM's decision translated.**

Make a mental note of all the SEM 's arguments that led to the rejection of your asylum application. You will need to respond to these in your appeal.

→ **Collect evidence to support your case.**

When you send your appeal you must enclose any evidence that supports your case and has not yet been handed in to the Swiss authorities (e.g. medical certificates, warrants of arrest, court judgements etc.). Make sure you obtain all documents in time.

4. Writing the appeal

Appeals can be written in German, French or Italian. Maybe you know someone who is able to help you with this task? You will find appeal form **B** which is several pages long below. Key petitions have been printed onto the form in advance. **The form must be completed in accordance with your personal situation.** Write straight onto the form where you see the ✍ symbol. Use additional sheets of paper if you run out of space.

→ **Complete appeal form **B** point for point:**

7 Place, date

8 Personal details and current address (family name, first name, date of birth, street, post-code/town. List all people mentioned in the SEM's decision).

9 Date of the SEM's decision (stated at the top left of the SEM's decision)

10 N-number (the six-digit figure stated at the top left of the SEM's decision)

11 This is the **most important part of the appeal**. Explain here in detail why you disagree with the SEM's decision and why you wish to remain in Switzerland. Use additional sheets of paper if you run out of space.

Please note:

- You need to respond to all the SEM's arguments.
- Is the SEM's decision based on the fact that your explanations are considered not to be true? If this is the case you must list all counter-arguments and try to clarify any contradictions or misunderstandings.
- What consequences would you suffer if you were forced to return to your country of origin now? Explain *who* persecutes you *when* and *for what reason*?
- You must prove or at least **present convincingly** that you are being persecuted. Enclose any evidence you have not yet handed in (e.g. warrants of arrest, court judgements, medical certificates, newspaper articles etc.) and explain their significance.

Additional information concerning appeals with only a five-day deadline:

- If you were not able to present travel or identification papers give the exact reasons why.
- If the officials should make further clarifications relating to your particular case, write down which ones should be made (for example relating to a specific happening in connection with the political situation in your town).
- If the SEM wants to send you back to a third country in which you previously stayed, explain why this should not happen (for example: That you fear the third country will send you back to your country of origin. That you have family or caregivers in Switzerland).

Extradition to a European country, Norway or Island; CAUTION the appeal has no suspensive effect:

This means, you will be extradited despite a deposited appeal. This is usually the case when a European country in which you previously stayed agrees to take you back. Request that the suspensive effect of your appeal should be granted. Explain why you fear that this third country will not check your persecution or why in your country of origin you risk inhuman and humiliating treatment.

- 12** If you are not granted refugee status you might **be granted temporary acceptance instead (F permit)**, if for some reason deportation to your own country cannot be implemented. Your deportation is not reasonable because it would violate humanitarian standards to return you to your country of origin. This applies, e.g., if you would be exposed to **actual danger** in your country of origin for reasons other than the ones already mentioned.

Under Swiss law refugees may be granted asylum:

[Article 3 of the Asylum Law](#)

«Refugees are persons who in their country of origin or the country they last lived in are exposed to serious disadvantages or have well-founded reason to fear being exposed to such disadvantages due to their race, religion, nationality, membership of a particular social group, or political opinion.

Serious disadvantages are in particular threats to life, limb or freedom as well as measures which exert intolerable psychological pressure. Reasons, specific to women, for seeking refuge must be taken into account.»

State any further reasons other than those already mentioned that in your particular case speak against sending you back to your country of origin. For example:

- Implementation of deportation is unreasonable for **medical** reasons if treatment of a serious illness is only available in Switzerland. Explain what consequences you would suffer

as a result of deportation and enclose a current medical certificate. Ask the Swiss Asylum Appeal Commission to obtain an expert opinion.

- There is currently a **civil war or a generally violent situation** in your country of origin. Explain what consequences you would suffer if you were to return.
- The SEM frequently argues that there is an **internal place of refuge**, that is a place in your country of origin where you could settle without being exposed to any danger. Maybe it is unreasonable to expect you to move to such a place? In this case the following arguments may be relevant:
 - You cannot survive in this place for *economic reasons* (e.g. because your training, language or the current situation in the place itself etc. mean you would not be able to find work)
 - You have *no links* with the place of refuge (e.g. you never or only briefly lived in this place, don't speak the language and don't have any relatives or friends there etc.)
 - You cannot settle there because of your age, sex or because you have a very large family.

13 List all the evidence enclosed with the appeal to support your case on the last page. Send the originals and keep copies for yourself. You must enclose a copy of the SEM 's decision. Please also enclose the letter of confirmation from social services if you are receiving social security. **Now copy the entire appeal twice.**

14 Sign all three copies. **Send two copies of the appeal** together with all evidence to support your case (copy of the SEM decision, letter confirming your dependency on social security and any other evidence) by registered post to the Bundesverwaltungsgericht, Postfach, CH-9023 St. Gallen. **Respect the deadlines!**

5. What happens next?

You will receive post from the Federal Administrative Court. Get someone to translate the contents and act if necessary. There are a variety of options. We have listed the main ones below:

- You receive a letter confirming receipt from the Federal Administrative Court. You can legally remain in Switzerland until a decision is made. Be aware that the decision can be taken within few days.
- The Federal Administrative Court regards your appeal as «completely hopeless». It therefore demands an advance payment towards the costs and sets a deadline for this to be paid. If you don't pay your appeal will not be examined. If you do pay, your appeal will be examined but your chances in this instance are particularly poor.
- The Federal Administrative Court grants a short deadline during which you have the opportunity to remedy any mistakes in the appeal. You absolutely must respond otherwise your appeal will not be examined.
- The Federal Administrative Court gives you an opportunity to present your opinion on a new statement of the SEM. Try to respond!

The Federal Administrative Court can decide in a number of ways. If the decision is negative, you have to leave Switzerland. The Federal Administrative Court can dismiss the entire matter and return the case to the SEM for further clarification. The decision may be positive and you are granted asylum or temporary acceptance in Switzerland.

The decision of The Federal Administrative Court is final. It's not possible to appeal to The Federal Court. The motion for reconsideration is rarely possible. Please ask for legal help (<https://www.fluechtlingshilfe.ch/hilfe-fuer-asylsuchende/rechtsschutz#c505>).