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PENDING APPEALS, ABANDONED APPEALS & DETERMINATION IN THE  
ABSENCE OF A PARTY (WITH OR WITHOUT A HEARING)**

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**CHAPTER 12 PENDING APPEALS, ABANDONED APPEALS & DETERMINATION  
SECTION 6 IN THE ABSENCE OF A PARTY (WITH OR WITHOUT A HEARING)**

Section 104 of the Nationality, Immigration and Asylum Act 2002 explains the circumstances in which an appeal is "pending." This is important because a person cannot be removed from the UK while an appeal that may be brought in-country is pending. The definition only applies to appeals under section 82 of the Act, because a person appealing under section 83 is in no imminent danger of removal.

**1. WHEN IS AN APPEAL PENDING?****1.1. The start of the period**

Where an appellant is in the UK, many enforcement decisions cannot take effect as long as an appeal is pending. An appeal is pending while the time limit for appealing is running (ie from the point when the refusal notice is served), and, if an appeal is instituted, from the point when the appellant serves a formal notice of appeal. If there is no in-time appeal, the fact that someone may appeal out of time does not make the appeal pending unless and until they do so. A person who does not appeal within the time limit may be removed unless they put in an out-of-time appeal.

**1.2. The end of the period**

An appeal ceases to be pending when it is finally determined or, in other words, when the appellant runs out of options for appealing further. As soon as the time limit for appealing to the higher court expires, the appeal ceases to be pending unless and until the appellant seeks the court's permission to appeal out of time. If a higher court decides to remit a case back to the AIT, the remittal decision is not a final determination of the appeal and therefore the appeal continues to be pending.

**1.3. Judicial review**

Judicial review is not part of the appeals system, and the fact that an applicant may have the right to seek a judicial review does not affect whether or not an appeal is pending.

**1.4. Other circumstances in which an appeal ceases to be pending**

An appeal will also cease to be pending when:

- the appeal is withdrawn (see next section)
- the appeal is abandoned (see next paragraph)
- the appellant is granted leave to enter or remain in the UK
- the appellant leaves the UK
- a deportation order is made (unless the appeal is against the decision to make a deportation order, in which case the appeal continues to be pending)

- a certificate is issued under section 97 or 98 (ie a one-stop certificate or a certificate that the decision was taken on grounds of national security or the public good).

## 2. APPEALS TO BE TREATED AS ABANDONED OR FINALLY DETERMINED

### 2.1. Appeals to be treated as abandoned

Section 104(4) (as amended by section 9 of the Immigration, Asylum and Nationality Act 2006) sets out the circumstances in which appeals under section 82 are to be treated as abandoned. They are:

- the appellant is granted leave to enter or remain in the UK
- the appellant leaves the UK

The appeal is only abandoned if it was brought by a person while in the United Kingdom. If the appeal was brought by a person outside the United Kingdom section 104 has no effect. This prevents anomalies such as an appeal against a refusal of entry clearance being treated as abandoned if an entry clearance conferring leave to enter is later granted for a different purpose. For example, if someone appealed against the refusal of entry clearance as a spouse but was then granted leave to enter as a visitor, their appeal would not fall to be treated as abandoned. Appellants are therefore no longer required to choose between pursuing an appeal and coming to the UK.

Note that section 104(4) does not apply to appeals under section 83 (appeals against the refusal of asylum where leave is granted on some other basis).

Schedule 2 paragraph 4(2) of the Immigration (European Economic Area) Regulations 2006 also provides that an appeal shall be treated as abandoned where the appellant is issued with a registration certificate, residence card, a document certifying permanent residence or a permanent residence card, or a registration certificate under the Accession (Immigration and Worker Registration) Regulations 2004 or where that person's passport has been stamped with a family member residence stamp. However, a pending appeal under the EEA Regulations is not to be treated as abandoned solely because the appellant has left the UK (Regulation 25(4)).

Under Rule 18 of the Procedure Rules, the parties must inform the appellate authorities if any of these events occurs. **This is important.** There have been cases in the past in which an appeal has been allowed despite the fact that the appellant had left the UK. Had the AIT known, the appeal would have been treated as abandoned. On receipt of notice from the parties, the AIT must reciprocate by serving notice on the parties informing them that the appeal is being treated as abandoned, and must take no further action on the appeal.

It is possible to continue appeals on grounds relating to the Refugee Convention where the appeal would otherwise be treated as abandoned because the appellant has been granted leave to enter or remain for a period exceeding 12 months. If an appellant wishes to prevent such an appeal from becoming abandoned, they must give notice to IND as well as to the AIT or the relevant court within 28 days of the grant of leave to enter or remain.

Likewise it is possible to continue appeals on Race Relations grounds where the appeal would otherwise be treated as abandoned because the appellant has been granted leave to enter or remain. To prevent such an appeal becoming abandoned, the appellant must also give notice in the manner set out above.

Where an appellant wishes to give notice that an appeal is to be continued on Refugee Convention or Race Relations grounds, the form of the notice given must comply with the relevant court or tribunal's rules of procedure. Rule 18 of the AIT's Procedure Rules specifies what information the notice must contain. If the appeal has reached the higher courts, rule 21.7B of Practice Direction 52 of the Civil Procedure Rules specifies what information the notice must contain.

## 2.2. Appeals to be treated as finally determined

Section 104(5) states that an appeal shall be treated as finally determined if a deportation order is made against the appellant. This applies to appeals against:

- refusal of leave to enter
- refusal of a certificate of entitlement under section 10 of the 2002 Act
- a refusal to vary leave where the result of the refusal is that the applicant has no leave;
- variation of leave where the result of the refusal is that the applicant has no leave (curtailment);
- revocation of leave under section 76 of the 2002 Act

In each case, the appellant will have had the right of appeal against the decision to make a deportation order.

Again, Rule 18 requires the parties to inform the appellate authorities if an appeal has to be treated as finally determined in this way. The AIT must respond by serving notice and taking no further action as in the case of abandonment under section 104(4).