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CHAPTER 12
SECTION 4**HANDLING APPEALS**

This instruction gives general guidance on the action to be taken at various stages of the appeals process. Throughout this chapter, "Tribunal" means the Asylum and Immigration Tribunal (AIT). The AIT is the body that assumed responsibility for hearing and determining immigration appeals following the introduction of the single tier tribunal structure in the 2004 Act.

1. NOTICES OF APPEAL**1.1 Appeals to the AIT**

Under rule 6 of the Asylum and Immigration Tribunal (Procedure) Rules 2005, an appeal must be brought by completing the relevant prescribed form which should then be filed with the AIT.

There are three prescribed forms for appealing to the Tribunal. One is for appeals lodged in the UK, one is for appeals lodged overseas and one is for use where the decision is made while the applicant is in the UK, but where the appeal can only be lodged after the applicant has left the country.

Whichever form is used, it must be signed and dated. Signature can either be by the appellant or by the appellant's representative. Where the appeal notice is signed by the appellant's representative the representative must certify in the notice of appeal that he has completed it in accordance with the appellant's instructions.

The notice of appeal must state the name and address of the appellant. It must state whether or not there is an authorised representative and, where there is, give the representative's name and address. The form must also set out the appellant's grounds of appeal and any reasons advanced in support of those grounds. Wherever possible the notice of appeal should set out any documents on which the appellant proposes to rely in support of his appeal.

1.2 Applications for review

Where an appellant is dissatisfied with a determination of the AIT (where comprised of less than three legally qualified members) an application for review may be made to the appropriate court for an order that the AIT should reconsider their decision. In the case of an appeal heard in England and Wales the appropriate court is the High Court; in Scotland it is the Outer House of the Court of Session and in Northern Ireland it is the High Court in Northern Ireland. Such an application will initially be considered by a member of the AIT, but where the member of the AIT refuses to make an order for reconsideration the applicant may choose to renew the application to the appropriate court (this is known as "opting in"). The relevant forms to be used at each stage can be found in the schedule to the Asylum and Immigration Tribunal (Procedure) Rules 2005.

1.3 Appeal from the AIT

Where the AIT who heard the appeal was comprised of three or more legally qualified members or the AIT were reconsidering the appeal following a successful

application for review a party dissatisfied with the determination can bring an appeal to the appropriate appellate court. In England the appropriate appellate court is the Court of Appeal; in Scotland it is the Inner House of the Court of Session and in Northern Ireland it is the Court of Appeal in Northern Ireland.

2. ACTION TO BE TAKEN ON RECEIPT OF AN APPEAL

2.1 Time limits

A notice of appeal must be filed with the AIT within a specified period of time following the date on which the appellant is deemed to have been served with a notice of immigration decision (**See Chapter 12 Section 2 for details as to service**).

The relevant periods of time within which the notice of appeal must be filed are:

- (a) If the appeal is brought in the UK
 - (i) 5 days if the appellant is detained; or
 - (ii) In any other case 10 days.
- (b) If the appeal is brought from outside the UK
 - (i) 28 days after departure if the appellant was in the UK when served with the decision appealed against and the appeal cannot be brought in country due to a provision of the 2002 Act;
 - (ii) In any other case- 28 days after service of the decision.

When calculating the periods of time referred to you should exclude the day on which the notice is deemed to have been served. Where the period in question is 10 days or less any day which is not a business day shall be excluded from the calculations. A business day is defined as any day other than a Saturday or Sunday, a bank holiday, 25th to 31st December or Good Friday.

2.2 Out of time appeals

Rule 10 of the Procedure Rules requires any appellant who submits a notice of appeal outside the relevant time limit to include with the notice an application for an extension of time. This application must state the reasons why the appeal is late and include any evidence relied upon in support of this explanation. The AIT may extend the time limit for appealing if there are special circumstances that would make it unjust not to do so.

If an appeal appears to the AIT to have been brought outside the relevant time limit but no application to extend time has been included in the notice of appeal the AIT may extend time of its own motion, but will otherwise notify the appellant that it proposes to treat the notice as having been given out of time. Where such notice is given the appellant may file written evidence to demonstrate, either that the notice was given in time, or that there are special circumstances why the notice could not be given in time. Where such evidence is to be submitted it must be filed:

- (a) Within 3 days if the appellant is in the UK;
- (b) Within 10 days if the appellant is outside the UK.

2.3 Service of the decision on the respondent

When the Tribunal receives a notice of appeal it will send a copy of the notice, as

soon as is practicable to IND or, in appeals against the refusal of entry clearance, to the entry clearance officer. However this does not apply where the notice of appeal was originally served on the entry clearance officer.

2.4 **Filing of documents by the respondent**

When a copy of the notice of appeal is received by IND, we must file with the Tribunal a copy of,

- The notice of decision and any other document that was sent to the appellant which gave the reasons for the decision to refuse,
- Any statement of evidence form that had been completed by the appellant,
- A record of interview,
- Any unpublished document which is referred to in the notice of decision, or which is relied on by IND and
- The notice of any other immigration decision for which the appellant has a right of appeal under section 82.

These documents must be filed with the Tribunal in accordance with any directions given by the Tribunal . If no directions are given then the documents must be filed no later than 2.00 pm on the business day before the earliest date set for the appeal hearing.

A copy of the documents that are sent to the Tribunal must also be sent to the appellant, with the exception of the documents that IND has already sent to him.

2.5 **Setting of hearing date by the AIT**

When the appellant is in the UK and the appeal relates in whole or in part to an asylum claim, the appeal hearing should be set for a date no later than 28 days after the Tribunal receives the notice of appeal or 28 days after the Tribunal has decided that a late notice of appeal can be considered. If the appeal is to be determined without a hearing then this should be done no later than 28 days after the receipt of the appeal notice.

3. **ADJOURNMENTS**

3.1. **Applying for an adjournment**

Adjournments should be avoided wherever possible. If it is necessary to seek an adjournment of an appeal hearing, the party requesting the adjournment should notify all other parties and produce evidence to establish any fact or matter relied on to show why the adjournment is necessary. In any application for an adjournment, the Tribunal will have to be persuaded that the appeal cannot be determined justly

without one.

3.2. Resumed hearings

If the AIT decides to adjourn the substantive hearing, a new hearing date should be set. The appeal must usually be heard, or determined within 28 days of the adjourned hearing unless there are exceptional circumstances that mean that the case could not be justly heard within that timescale.

4. THE STRUCTURE OF THE HEARING

The Secretary of State, Immigration Officer or Entry Clearance Officer is represented by a Presenting Officer (PO). In asylum appeals where the claim has been processed under the New Asylum Model, the Secretary of State is represented by a Case Owner (CO).

Under the provisions of the Nationality, Immigration and Asylum Act 2002, the Asylum and Immigration (Treatment of Claimants etc) Act 2004 and the Asylum and Immigration Tribunal (Procedure) Rules 2005, the Tribunal have some discretion as to how the appeal hearing should be conducted. However, they will usually follow the following standard format. They should first give the PO/CO the chance to amplify the written reasons for refusal or explanatory statement. The PO/CO can correct minor errors and amend the grounds for refusal at this point. The appellant or representative may also make an opening address. This stage of the hearing is usually very short.

If the appellant opts to give oral evidence (as they usually do), there will be questions from the representative, if there is one (examination-in-chief). The purposes of examination-in-chief are to provide evidence in support of the appellant's claim and to rebut the adverse points made in the refusal papers. Leading questions may not be put. The PO/CO will then have the opportunity to cross-examine in order to test the evidence. It is possible to raise in cross-examination issues (such as credibility) that have not been addressed in the reasons for refusal letter. However, the PO/CO will be unable to do this if the appellant chooses not to give evidence. Witnesses may then be re-examined by the appellant or representative, who will seek to repair any damage done to the appellant's case during cross-examination.

After evidence has been taken from all the witnesses, the PO/CO will address the AIT, summarising the reasons why the appeal should be dismissed. The representative (or the appellant in person) will then try to persuade the Tribunal that the appeal should be allowed.

5. THE ROLE OF THE AIT

5.1. Matters to be considered

Section 85 explains what the AIT will consider during the hearing of an appeal. In

any appeal under section 82, the AIT **must** consider

- any other decision against which the appellant has a right of appeal under section 82. .
- any matter raised in a statement of additional grounds under section 120 (ie in response to a one-stop warning) which constitutes a ground of appeal under section 84. It does not matter whether the statement was made before or after the appeal commenced.

In any appeal under section 82 or 83, the AIT **may** consider evidence about any matter which the AIT thinks is relevant to the substance of the decision. In accordance with the one-stop process IND will serve a notice on the applicant requiring him to state all of the reasons for wishing to remain in the UK. All grounds that are advanced should be considered at the appeal hearing. See Chapter 12 section 3 for information on the one-stop process.

- In entry clearance and certificate of entitlement cases the AIT may only consider the circumstances as they stood at the date of the decision under appeal. This does not exclude later evidence which sheds light on the earlier circumstances.
- In all other cases, the AIT may consider evidence which concerns a matter arising after the date of the decision.

The AIT is bound by precedents set by higher courts and, by starred determinations of the Tribunal. It is also required to treat Country Guidance cases as providing authoritative findings on country conditions in asylum or human rights appeals, provided the case it is dealing with depends on the same or similar evidence to that considered in the relevant Country Guidance case. They are also expected to follow any practice directions issued by the President of the Tribunal.

5.2. **Determination**

Under section 86, the AIT must determine anything raised as a ground of appeal and anything which must be considered under section 85. If the AIT misses any such point this is likely to constitute an error of law on which an application for review or an onward appeal may be founded.

The Tribunal must allow an appeal "in so far as" the decision was not in accordance with the law (which includes the immigration rules). An appeal must also be allowed if a discretion within the rules should have been exercised differently. A refusal to depart from the rules does not count as an exercise of discretion in this context. In all other circumstances, the AIT must dismiss the appeal.

5.3 **Serving the determination**

As a general rule the AIT must serve a written determination containing its decision and the reasons for it on every party to the appeal. Where there has been a hearing, the AIT must send a written determination to the parties within 10 working days of the conclusion of the hearing. Where there has not been a hearing the AIT must send the determination to the parties not later than 10 days after completing the determination.

The one exception to this general rule is in an asylum case where the appellant has

appealed from within the UK. In such a case the AIT will serve the determination on the respondent within the timescales set out above and the respondent will then serve the determination on the appellant. The respondent must serve the determination on the appellant:

- (a) If the respondent wishes to bring a further appeal, not later than the date on which it makes such an application;
- (b) Otherwise not later than 28 days after receiving the determination from the Tribunal.

5.4 Hearing in the absence of a party

Under Rule 19 of the Procedure Rules 2005, the appellate authorities **must** hear an appeal in the absence of a party or representative when:

- the party concerned was given notice of the date, time and place of the hearing, but is absent and has given no satisfactory explanation

Rule 19 states that the appellate authorities **may** hear an appeal in the absence of a party when:

- a representative of that party is present; or
- the party is outside the UK; or
- the party is suffering from a communicable disease or is likely to behave in a violent or disorderly manner; or
- the party is unable to attend because of illness, accident or "some other good reason.;" or
- the party is unrepresented and cannot in practice be given notice of the hearing; or
- the party does not wish to attend the hearing, and has told the AIT.

A full determination must be issued in these cases, and there will be the same onward rights of appeal as described in section 6 below.

5.5 Determination without a hearing

Rule 15 of the Procedure Rules 2005 allows the appellate authorities to determine an appeal without a hearing if

- all the parties to the appeal consent
- the appellant is outside the UK or it is impractical to give notice of hearing, and the appellant has no representative
- a party has failed to comply with the Procedure Rules or a direction of the appellate authorities, and the AIT is satisfied that it is appropriate to determine the appeal without a hearing. If the party in default is the appellant, the AIT **may** dismiss the appeal without substantive consideration, although the decided cases suggest that this will rarely, if ever, be appropriate where there is evidence on which the AIT could base a substantive determination
- the Tribunal is satisfied that the appeal can be justly determined without a hearing. If the AIT intends to proceed in this way, they must give the parties a chance to comment in writing

5.6. Notification of the outcome of Rule 15 cases

Rule 15 allows the appellate authorities to determine the appeal without a hearing. It does not absolve them from issuing a full, written determination. There is a right of onward appeal if one would normally exist. The appellate authorities must notify this right to the parties.

5.7. **Removal cases**

Section 86(4) provides that "a decision that a person should be removed from the United Kingdom under a provision shall not be regarded as unlawful if it could have been lawfully made by reference to removal under another provision."

The statutory provisions on removal are complex, and even a slight change of story can shift the basis of some cases from one provision to another. Section 86(4) means that a removal decision can be upheld as long as the AIT agrees that removal is appropriate, even if the appellant's status is not what was thought when the decision was taken.

6. **ACTION FOLLOWING AN AIT HEARING**

6.1. **The AIT's determination**

In non-asylum cases the AIT will send the determination to Angel Square POU. In an asylum case the Tribunal will send the determination to the Appeals Determinations Management Unit (ADMU) for personal service on the appellant.

6.2. **Onward rights of appeal: reconsideration**

Where an appellant is dissatisfied with a determination of the AIT (where comprised of less than three legally qualified members) an application for review may be made to the appropriate court for an order that the AIT should reconsider their decision. In the case of an appeal heard in England or Wales the appropriate court is the High Court; in Scotland it is the Outer House of the Court of Session and in Northern Ireland it is the High Court in Northern Ireland. Such an application will initially be considered by a member of the AIT, but where this member of the AIT refuses to make an order for reconsideration the applicant may choose to renew the application to the appropriate court.

An application for review must be made within 5 days of the service of the determination (28 days in the case of an appellant who is abroad). This period can be extended by the appropriate court or by the Tribunal member considering the application where the application could not be reasonably practicably have been made within the relevant time limit.

In accordance with Rule 26 of the AIT (Procedure) Rules 2005 an immigration judge can be appointed by the President of the Tribunal to deal with applications for review. In practice, this role will always be performed by a Senior Immigration Judge. These applications will be decided without a hearing, on written submissions and with the documents filed with the application notice for appeal. The immigration judge will give a written determination in which he can, if appropriate, order the Tribunal to reconsider its decision.

If the Immigration Judge refuses to order reconsideration, then the dissatisfied party

may apply within five working days for the reconsideration request to be considered by a High Court Judge. This is known as an “opt-in request”. The Judge will consider the matter on the papers, and decide whether or not to order reconsideration. There is no appeal against his decision.

If a decision that the appeal should be reconsidered is notified, and the other party contends that the Tribunal should uphold the initial determination for reasons different or additional to those given in that determination, he must file and serve a **reply** with the Tribunal and the other party. The Reply must be served no later than 5 days before the earliest date appointed for the reconsideration hearing.

When an order for reconsideration has been made, a reconsideration hearing will take place. At that hearing, the AIT must first decide whether the original Tribunal made a material error in law. If the decision is that the original Tribunal did not make a material error in law then the original determination must stand.

If the AIT decides that the original Tribunal did make a material error of law, it must substitute a fresh decision to allow or dismiss the appeal. If it needs further evidence before it can do this, it may decide either to adjourn the hearing or to transfer the proceedings to another Immigration Judge or panel, in order for that evidence to be taken.

A diagram describing onward rights of appeal following a Tribunal hearing at which less than three legally qualified members of the AIT were sitting can be found at **Annex B**.

6.3 **Onward rights of appeal: from the appropriate court to the appropriate appellate court**

If an application for review under section 103A raises an important point of law, then the appropriate court can refer it to the appropriate appellate court to decide on the issue. (section 103C refers).

6.4 **Onward rights of appeal: Appeal following a hearing by a ‘legal panel’**

If the AIT’s initial determination was made by a panel consisting of three or more legally qualified members, then it cannot be reconsidered. The only way of challenging such a determination is by appealing to the appropriate appellate court. In England and Wales the appropriate appellate court is the Court of Appeal; in Scotland it is the Inner House of the Court of Session and in Northern Ireland it is the Court of Appeal in Northern Ireland .

Permission to appeal to the appropriate appellate court should initially be sought from the AIT. Where the applicant is detained the application must be filed not later than 5 days after he is treated as having been served with the determination. In all other cases the application must be filed within 10 days. If an application is made outside of these time limits the Tribunal has no power to grant permission. In this situation the applicant should renew his permission application to the appropriate appellate court.

If the AIT refuses to grant permission then the application may be made to the appropriate appellate court. Permission must be sought 21 days after the decision which is appealed, however the Court of Appeal may extend this time limit in

exceptional circumstances.

6.5 **Onward rights of appeal: Appeal from the Tribunal following reconsideration**

Once an appeal to the Tribunal has been reconsidered a party to the appeal may appeal on a point of law to the appropriate appellate court (section 103B refers). Permission to appeal is sought in the manner set out at 6.4 above.

7. **JUDICIAL REVIEW**

Judicial review is the process which allows any decision by a public authority to be challenged in the courts. Detailed guidance on the handling of judicial reviews is given in the Immigration Directorates' Instructions, Chapter 27. Judicial review is not a statutory right of appeal.

7.1. **Timing and grounds for judicial review**

An application for judicial review can be made at any time, but the application is only likely to be granted once all other possible avenues of appeal have been exhausted.

7.2. **Court orders**

If the court grants permission to apply for judicial review, and if the applicant's case subsequently succeeds at the substantive hearing (as opposed to the permission hearing), a court order is likely to be granted. A court order is effective and must be obeyed unless and until it is set aside by the courts. If the reasons for granting a court order no longer apply, the order will nevertheless remain effective until reconsidered by the courts. An undertaking given to the court on behalf of the Crown has the same coercive effect as an order. The willful breach of a court order or a formal undertaking could constitute contempt of court. The court order would usually quash the immigration decision or the asylum decision, which may mean that the Secretary of State and/or the immigration officer has to reconsider the issue and make a new decision, bearing in mind the court judgment.