

Jul/06

IMMIGRATION DIRECTORATES' INSTRUCTIONS

SECTION CONTENTS

**CHAPTER 12 SECTION 5
RECOMMENDATIONS BY THE APPELLATE AUTHORITIES**

- 1. INTRODUCTION**
- 2. CONSIDERATION OF RECOMMENDATIONS**
- 3. NON-SPECIFIC RECOMMENDATIONS**

**CHAPTER 12
SECTION 5****RECOMMENDATIONS BY THE
APPELLATE AUTHORITIES****1. INTRODUCTION**

When allowing an appeal the AIT may make directions under section 82 of the Nationality Immigration and Asylum Act 2002 in order to give effect to their determination. Where such directions are made they must be obeyed unless the Secretary of State intends to appeal the AIT's determination.

When dismissing an appeal, or when an appeal is withdrawn, the AIT sometimes make a non-statutory recommendation that the Secretary of State should exercise his discretion in favour of the appellant. They will usually suggest reconsidering the application or granting discretionary leave. Such recommendations should be acted upon only where the determination and/or recommendation discloses clear exceptional compassionate circumstances which have not previously been considered and which would warrant the exercise of the Secretary of State's discretion outside the Immigration Rules.

2. CONSIDERATION OF RECOMMENDATIONS

Recommendations must be considered (before we commence any enforcement action) by the Presenting Officer (or the Case Owner in asylum appeals processed under the New Asylum Model) to see whether they contain clear exceptional compassionate circumstances which have not previously been considered. Presenting Officers should follow Appeals Directorate operational guidance.

Consideration should not be delayed pending the outcome of any application for reconsideration where an appeal has been dismissed by the AIT.

Where it is agreed to accept the recommendation and leave is granted, the appellant should be informed in a covering letter that any outstanding appeal (to the Asylum and Immigration Tribunal or the appropriate court) must be treated as abandoned in accordance with section 104(4) of the 2002 Act, though the grant of leave may trigger an appeal under section 83 (see section 1 of this chapter). The Secretary to the Tribunal or the appropriate court should also be informed (via Treasury Solicitors in the case of the Court of Appeal and OSAGS in the case of the Court of Session).

Where the recommendation is not accepted caseworkers should send a letter along the lines of the specimen attached at **Annex C**.

3. NON-SPECIFIC RECOMMENDATIONS

Determinations which contain a form of words suggesting that the Secretary of State should reconsider a case but which are not strictly recommendations should be considered as if they were recommendations in accordance with the advice in paragraph 2 above.