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Immigration Appeals 3 – appeal rights

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Part V of the Nationality, Immigration and Asylum Act 2002 (“the 2002 Act”) sets out appeal rights in immigration cases. Appeals are to the First-tier Tribunal (Immigration and Asylum Chamber). Appeal rights are complex. This information sheet sets out some basic information about rights of appeal and highlights some (not all) of the complexities.

When does a right of appeal arise?

There is a right of appeal against certain decisions of the UK Border Agency (or of the Home Secretary). Most of the decisions against which a person may appeal are listed in section 82(2) of the 2002 Act. The following list sets out all the decisions against which someone may appeal. If the relevant decision is not on the list, there is no right of appeal. The decision may, however, be challenged by way of judicial review.

Decisions of the UK Border Agency or Home Secretary against which an appeal may be brought:

- A refusal of leave to enter
- A refusal of entry clearance (a visa)
- A refusal of a certificate of entitlement (that a person has the right of abode)
- A refusal to vary (e.g. to extend) a person’s leave to enter or remain, but only if the refusal would leave the person without any leave to enter or remain – this only applies where the person had leave to enter or remain at the time he or she applied to vary (e.g. extend) his or her leave
- A variation of (e.g. to take away) a person’s leave to enter or remain, but only if the variation would leave the person without any leave to enter or remain
- A revocation of indefinite leave to remain
- A decision that a person is to be removed, but not removal directions for his or her removal
- A decision to make an order to deprive someone of the right of abode
- A decision to make a deportation order
- A refusal to revoke a deportation order
- An automatic deportation order
- Some further decisions relating to asylum, European law or British nationality law may also be appealed – see section (below).

Just because a decision is on the list does not, however, mean there is a right of appeal. This is because there are several exceptions and limitations set out in Part V of the Nationality, Immigration and Asylum Act 2002 that must also be considered.

Exceptions and limitations on appeal rights

Part V of the Nationality, Immigration and Asylum Act 2002 sets out various exceptions and limitations on appeal rights. These are complex and are not covered in full in this information sheet. There have been many cases where the UK Border Agency has misunderstood these provisions, and has issued documentation to individuals stating that a person does not have an appeal right where he or she does. There are also a number of cases where the First-tier Tribunal (Immigration and Asylum Chamber) has misunderstood the same provisions, and wrongly refused to hear an appeal on the basis that there is no power to do so. Errors have also been made the other way around – i.e. the person is treated as having a right of appeal when he or she does not. Some of the exceptions and limitations to appeal rights include:

- There is no right of appeal against a decision to refuse a visa or refuse leave to enter to someone who does not have a passport or an equivalent document (e.g. a refugee travel document).
- There is no right of appeal against a decision to refuse a visa or refuse leave to enter to someone who does not meet a requirement of the immigration rules as to age or nationality.
- There is no right of appeal against a refusal of leave to enter where a person is seeking to enter the UK for a different purpose from that for which he or she has been granted a visa.
- There is no right of appeal against the refusal of a visa for the purpose of studying in, working in or (in most cases) visiting the UK.
- However, generally exceptions (including those listed above) do not prevent a person bringing an appeal on human rights or race discrimination grounds.
- In certain cases concerning national security, the Secretary of State may exclude a right of appeal to the First-tier Tribunal (Immigration and Asylum Chamber), including where the appeal has already begun. If so, there will be a right of appeal to the Special Immigration Appeals Commission, which has complex procedures allowing the Secretary of State to rely on information that may be kept secret from the appellant (the person bringing the appeal).
- In many cases, an appeal may not be brought while the person is in the UK. An appeal against a refusal to vary leave, a variation of leave, a decision to revoke indefinite leave to remain or to make a deportation order are some of the decisions against which an appeal may be brought by someone in the UK. Asylum appeals may usually be brought while a person is in the UK, but if the UK Border Agency decides the person's asylum claim is clearly unfounded (i.e. an appeal would be bound to fail) it may prevent any appeal before the person leaves the UK.
- In asylum appeals, the First-tier Tribunal (Immigration and Asylum Chamber) must decide the case on the basis of the situation at the time of the appeal. This is also the case where an appeal is brought by someone in the UK on human rights grounds. In most other cases, the First-tier Tribunal decides the appeal on the basis of the situation at the time of the decision against which the appeal is brought. In some of these other cases, the First-tier Tribunal may be excluded from considering any evidence that was not before the UK Border Agency at the time the decision was made (depending upon the particular ground of appeal and the reason why the appellant wishes to rely on the evidence).

Rights of appeal against other decisions

Other decisions (not listed in the above list) against which there is a right of appeal are:

- A decision to deprive a person of British citizenship
- Certain decisions relating to European Economic Area nationals or their family members. However, the Immigration (European Economic Area) Regulations 2006, SI 2006/1003 include various exceptions and limitations in these cases.

There are also circumstances in which asylum-seekers may appeal against a refusal of asylum, or a decision to no longer recognise them to be a refugee, even though they have not received one of the decisions listed above – e.g. where someone is granted leave to remain for more than 12 months but refused asylum.