



Removals & Judicial Review

11th September 2007

Removal directions are issued to people when the Border and Immigration Agency (BIA) intends to remove them from the UK. Usually these will set out the date and time of the intended removal, and the destination and method of the removal. Often people receive removal directions very shortly before the date on which the BIA intends to remove them. For many of these people, there will be no right of appeal. This information sheet gives information about challenging removal directions by judicial review.

What is judicial review?

If there is no other right of appeal or review available, an action (or inaction) by Government or a Government agency can be challenged by judicial review. The BIA counts as a Government agency for these purposes, and removal directions may be challenged by judicial review. Applications for judicial review are considered by the Administrative Court (that is the relevant part of the High Court).

A judicial review challenge may be successful if the BIA is acting unreasonably or unlawfully. However, these are relatively strict tests. On a judicial review application, the Administrative Court judge will generally not make his or her own decision about what is or is not reasonable. In removal cases, the judge will usually consider the reasons given by the BIA for the decision to remove and decide whether the BIA have considered all the relevant circumstances of the case and provided reasonable and relevant reasons for the decision.

If relevant circumstances have not been considered, judicial review may be successful. If irrelevant or inaccurate reasons have been relied upon, judicial review may be successful. However, success on judicial review may, in some cases, mean no more than the BIA must reconsider the case.

It is highly advisable to get legal advice and representation to assist with any judicial review. Legal aid can be available for judicial review. Claiming legal aid involves completing detailed forms; and the ability of the individual to pay and the chances of his or her legal case succeeding will need to be assessed.

Relevant policy and practice

Two documents are particularly important in relation to judicial review challenges to removals. Both came into force in March 2007. This information sheet provides only some of the information given in these documents.

The BIA policy is set out in chapter 44 of the Operational Enforcement Manual (OEM), which is available at:
<http://www.ind.homeoffice.gov.uk/documents/oemsectiond/chapter44judicialreview?view=Binary>

The Administrative Court will follow the Civil Procedure Rules (CPR). Part 54 of the CPR governs judicial review. Paragraph 18 of practice direction 54 explains how the Administrative Court will deal with judicial review challenges to removals. It is available at:
http://www.justice.gov.uk/civil/procrules_fin/contents/practice_directions/pd_part54.htm#IDABMIGF

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Information sheets provide general information only.

ILPA members listed in the directory at www.ilpa.org.uk provide legal advice on individual cases. ILPA does not.

Timescales

The BIA policy is to give at least of 3 days between when a person is given removal directions and when he or she will be removed from the UK. At least 2 of these days must be working days. The last 24 hours before removal must include a working day. There are exceptions:

- in cases where the removal is to a safe third country (i.e. not the individual's country of origin), at least 3 working days must be given
- in cases where an unaccompanied asylum seeking child (i.e. a child who has claimed asylum and is separated from his or her parents and any other adult who by law or custom is responsible for him or her) is to be removed to a safe third country, less than 3 working days may be given
- in cases where the BIA have certified that the asylum claim is clearly unfounded (meaning that there will be no right of appeal to the Asylum and Immigration Tribunal (AIT) before removal), at least 3 working days must be given
- in cases where the person who is to be removed is at risk of suicide or self-harm, less than 3 days (and less than 2 working days) may be given
- these timescales do not apply to cases where the person has just arrived in the UK and is to be removed immediately from the port at which he or she arrived (as long as the removal is not delayed by more than 7 days)

Other BIA obligations

The OEM requires that the BIA must inform any legal representative who is on record of removal directions at the time the directions are given to the person to be removed. Removal directions must be accompanied by a short summary of the case; and the person must be given prompt access to a telephone for obtaining legal advice and providing ongoing instructions to a lawyer.

When will removal be deferred?

In most cases the BIA will not defer (that is cancel or postpone) the removal simply because a lawyer has threatened to apply for judicial review. (There are exceptions for safe third country and clearly unfounded cases.) However, if the Administrative Court office is closed, the BIA should consider deferring a removal if the lawyer provides the BIA with detailed grounds for an intended judicial review application.

In most cases the BIA will not defer the removal simply because an application for judicial review has been made. To get the removal deferred, a lawyer will need to provide detailed grounds for judicial review with the application that is made to the Administrative Court. Once the Court formally acknowledges receipt of the application (what is called 'issuing the claim'), this formal notice needs to be sent by the lawyer to the BIA.

If detailed grounds cannot be provided with the application to the Administrative Court, a statement explaining why this cannot be done must be provided instead. This will be referred to a judge immediately. It is important to ensure that the Court notifies the BIA that it is considering this statement. If the judge has not made a decision on whether or not to accept the explanation by the time set for the removal, the removal ought to be deferred.

Contact with the BIA

Section 44.9.4 of the OEM gives information about how to contact the BIA outside of normal office hours, including an emergency telephone number – 0161-261 1640.

Fresh claims

Most attempts to challenge removal by judicial review will relate to fresh claims. For further information, please see the information sheet on "Fresh Asylum Claims".