



Removals and Judicial Review 2

27th January 2009

On 30 January 2009, the UK Border Agency intends to change its policy which applies where someone who is to be removed from the UK seeks to challenge his or her removal by judicial review. The announcement of the change in policy is available at:
<http://www.ind.homeoffice.gov.uk/sitecontent/newsarticles/policychangeonjudicialreviews>

Information about how the UK Border Agency (which was at the time called the Border and Immigration Agency) deals with judicial review challenges to removal is given in the September 2007 information sheet on "Removals and Judicial Review". The information given there remains correct, except that from 30 January removal directions will not be deferred (or suspended) in the circumstances described in this information sheet.

The current position

The current position is explained in more detail in the September 2007 information sheet. The UK Border Agency will defer (or suspend) removal directions where either:

- The Administrative Court has formally acknowledged receipt of an application for judicial review, with detailed grounds.
- The Administrative Court has formally acknowledged receipt of an application for judicial review, without detailed grounds, and either the court has accepted the explanation as to why detailed grounds cannot be provided or the court has not yet decided whether to accept or reject the explanation by the time set for removal.

The Administrative Court is the part of the High Court which deals with judicial review applications.

The position from 30 January 2009:

The change that is to be made affects detained cases only.

The change is that the UK Border Agency (UKBA) may, in detained cases, no longer defer removal if the following circumstances both apply:

- Within the previous three months, an application for judicial review of removal directions has been refused permission.
- The UKBA decides that the new application for judicial review is on the same or virtually identical grounds as the previous application; or decides that the grounds raised in the new application could reasonably have been raised in the previous application.

If these circumstances apply and the UKBA decides not to defer removal, it will be necessary to make an application to the Administrative Court for an injunction in order to stop the removal. An injunction is an order from the court that a named person or body must not do something – in these cases, it would be an order that the UKBA must not carry out the planned removal.

The announcement of the new policy states that the UKBA will inform people that they must seek an injunction from the Administrative Court to stop removal if it is decided not to defer their removal. However, it would be unsafe for individuals and those advising them to simply wait to be told in the individual's case that the UKBA had decided not to defer removal. Where it is thought that the new policy does or could apply, it may be better to notify the UKBA of a reasonable time by which the UKBA should state whether or not the removal is deferred. If the

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Steve Symonds

ILPA legal officer

020 7490 1553

steve.symonds@ilpa.org.uk

Immigration Law Practitioners' Association

www.ilpa.org.uk

T 020 7251 8383

F 020 7251 8384

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.

UKBA fails to state whether or not the removal is deferred by that time, it may be best to assume that the removal will not be deferred without an injunction.

Further information

ILPA has been informed by the UKBA that the new policy will be monitored once it is introduced.

ILPA has informed the UKBA that particular problems may arise out of the new policy because it is not clear from the announcement:

- in what circumstances, grounds of a judicial review application will be treated as “*virtually identical*” to those of a previous application
- in what circumstances, the UKBA will decide that grounds of a judicial review application could have been included in a previous application
- what regard (if any) the UKBA will have to situations where the previous judicial review was submitted by an individual without legal representation or without adequate legal representation – this may be particularly important if the UKBA says that grounds in a new application could have been raised in a previous application

As was stated in the September 2007 information sheet, 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