



information sheet

Immigration Appeals – Changes

11th June 2009

In August 2008, the UK Border Agency published a consultation on changes to the immigration appeals system. On 8 May 2009, the Government published its response to this consultation. The original consultation document, responses from the public, judiciary and others and the Government's response are all available at:
<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/consultations/closedconsultations/immigrationappeals/>

This information sheet provides information about the changes the Government intends to make, and when the changes are expected to be introduced.

General note

This information sheet provides information about the appeals system. It does not provide information about which decisions of the UK Border Agency can or cannot be appealed. It does not provide information about the time limits for bringing appeals.

Not all decisions of the UK Border Agency can be appealed. When an appeal can be made, the time limits are short – and in some cases very short. It is advisable to seek legal advice immediately on receipt of any negative decision of the UK Border Agency, and to seek legal advice about appeal rights before making any application to the UK Border Agency.

The old system – Immigration Appellate Authority

Before April 2005, immigration appeals were heard by the Immigration Appellate Authority (IAA). Usually an appeal would be heard by an adjudicator of the IAA. If the adjudicator made an error of law an appeal could be made to the Immigration Appeal Tribunal (IAT).

If the IAT found the adjudicator had made an error of law, it would decide whether the appeal needed to be heard again. If so, the IAT would often remit (send the case back) to another adjudicator to hear the appeal and make a new decision. If the new adjudicator made an error of law, an appeal could again be made to the IAT.

This was a two-tier appeal system.

The current system – Asylum and Immigration Tribunal

Immigration appeals are currently heard by the Asylum and Immigration Tribunal (AIT). The AIT was established in April 2005. It replaced the IAA and IAT. It is a single-tier appeal system.

However, there is much about the AIT that is similar to the previous system. Most appeals are heard by one person – he or she is called an immigration judge. If the immigration judge makes an error of law, an application for reconsideration of his or her decision can be made to the AIT (but not the same immigration judge).

If the AIT decides the immigration judge has made an error of law, it will decide whether the appeal needs to be heard again. If so, the AIT may order there to be a further hearing by another immigration judge (or panel of judges). However, if the new immigration judge (or panel) makes an error of law, it is not possible to again make an application for reconsideration.

ILPA information service

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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.

The role of the High Court and Court of Appeal

In the old system, the High Court could order the IAT to consider an appeal against an adjudicator if the IAT had refused to do so. In the current system, the High Court can order the AIT to reconsider the decision of an immigration judge if the AIT has refused to do so. Essentially, this allows the High Court to intervene in the appeals system where an appeal has not been allowed to progress through the entirety of that system and it appears that there has been an error of law.

In the old system, an appeal could be made to the Court of Appeal if the IAT had considered an appeal against the decision of an adjudicator and dismissed that appeal. In the current system, an appeal can be made to the Court of Appeal if the AIT has made a decision on an appeal and no application for reconsideration can be made. Essentially, this allows for an appeal to the Court of Appeal when an appeal has gone through the entirety of the system and it appears that there has been an error of law.

The proposed system – incorporate immigration appeals in the Tribunal Service

The Tribunal Service introduced by the Tribunals, Courts and Enforcement Act 2007 establishes a new tribunal system for many tribunals (the Tribunal Service). It has many different parts (called chambers) dealing with different types of appeals. It is a two-tier appeal system. Decisions of the First-tier can, if there is an error of law, in many cases be appealed to the Upper Tribunal. (There are some exceptions – e.g. appeals against refusal of asylum support are dealt with by the First-tier and cannot be appealed to the Upper Tribunal.)

The new system began working in November 2008. At that time, immigration appeals were not dealt with by the new system. The Government intends to abandon the AIT established in 2005 and move immigration appeals into the new system. Immigration appeals will be dealt with in special chambers of the First-tier and Upper Tribunal. This is to happen in early 2010. Immigration appeals will be heard by judges in the First-tier, and if the judge makes an error of law it will be possible to appeal to the Upper Tribunal. If the Upper Tribunal decides the judge has made an error of law and the appeal needs to be reheard, it will be able to remit (send the case back) to the First-tier.

Role of the High Court and the Court of Appeal in the new system

The Government wishes to reduce the role of the High Court and Court of Appeal. It says that too much of the work of these courts has been taken up with immigration cases. Much of the work done by these courts is concerned with immigration. However, many of the decisions made by these courts show that the UK Border Agency and the existing appeals system have failed to decide individual cases properly. Two Parliamentary Select Committees (Home Affairs and Human Rights) have recently raised concerns about the Government's proposals. They highlight the complexity and fundamental rights that are often involved in these cases, the continued need for improvement in the quality of decision-making and that the Tribunal Service is very new. These are all good reasons why the role of these courts should not be reduced.

Some of the ways the Government is considering to reduce the role of the High Court and Court of Appeal are explained in the May 2009 "Borders, Citizenship and Immigration Bill 2" information sheet.

Meaning of error of law

An 'error of law' includes where the wrong legal test is applied, something that is relevant is not taken into account, something that is irrelevant is taken into account or inadequate (or no) reasons are given for a decision.