



Deportation Appeals

Representing Yourself in the First Tier Tribunal (FTT) in an Article 8 Deportation Appeal

July 2017

Bail for Immigration Detainees (BID) is a national charity that provides legal advice and representation to individuals held under immigration powers to secure their release from detention. We also provide legal advice and representation to detainees facing deportation. BID works with detainees in all removal centres in the UK, and with immigration detainees held in prisons.

- We provide free legal advice, information and support to immigration detainees to help them exercise their right to liberty and access to justice, and to help them challenge their deportation.
- We prepare and present (free of charge) applications for release on bail or temporary admission.
- We carry out research and use evidence from our legal casework to influence decision-makers, including civil servants, parliamentarians, and regulatory bodies through policy advocacy.

The Article 8 Deportation Advice project (ADAP) is a project that provides free legal advice and representation to individuals challenging deportation on the grounds of their long residence in the UK and/or their family life in the UK.

The right to respect for family and private life is protected by Article 8 of the European Convention on Human Rights.

Disclaimer

Although every effort is made to ensure the information in this factsheet is accurate and up to date, it should not be treated as a complete and authoritative statement of the law. BID cannot be held liable for any inaccuracies and their consequences. The information in this factsheet is not legal advice. If you have a legal problem you should talk to a lawyer or legal adviser before making a decision about what to do.

Please check that this factsheet is up to date before using it. Please also check whether BID has written other factsheets or leaflets that might be relevant to you. All BID factsheets and leaflets can be found at www.biduk.org

Who is this leaflet intended for?

It is a guide for people challenging deportation on grounds of long residence and/or family life who do not have a legal representative and who have an in-country right of appeal (i.e. those who can remain in the UK while they appeal against the decision to deport) to the First Tier Tribunal.

Note: It is not a guide to hearings in the Upper Tier Tribunal (UTT, which is a higher court and decides appeals against decisions of the First Tier Tribunal).

Please see the **glossary** at the end of the leaflet for an explanation of key terms used in the leaflet.

Once I have lodged my appeal to the First Tier Tribunal (FTT), what documents will I receive?

You should receive the following documents;

a) **A Notice of Hearing from the Tribunal.** That often has two hearing days. The first is the Case Management Review Hearing (CMRH) or Pre Hearing Review (PHR). That is not a full hearing. It is for the Court to consider whether the case is ready to go ahead to full hearing. The Notice of Hearing will state whether you should attend the court for the first hearing. You need to either attend or send a reply form by the date stated on the form, where you can explain what your appeal is about, how many witnesses you will be calling and what further evidence you will be relying on. You also need to confirm if you need an interpreter. The second hearing date is for the full hearing of your appeal.

b) **A 'Respondent's bundle'.** This is prepared by the Home Office and is the bundle of papers they will rely on at the appeal. This should contain documents such as;

- The Home Office Notice of Decision. This is the Home Office letter providing the Home Office reasons why you should be deported from the UK;
- Any letters, representations or evidence that you or a family member or friend has given to the Home Office supporting your challenge to deportation;
- The Sentencing Remarks of the Judge in your criminal trial;
- Your OASys or NOMS report which provide comments on your risk of reoffending and risk of harm;
- It may contain some other information the Home Office will rely on such as general information about conditions in the country of deportation and decisions of the courts on deportation, called 'case law';
- It may contain evidence from the Metropolitan Police and marked Operation Nexus. This will have police reports that relate to your prior criminal offending and which the FTT could allow as being relevant to your risk of reoffending.

How should I prepare myself for the court hearing before the First Tier Tribunal?

There are some basic steps you should take to prepare for the hearing:

a) Carefully read through the Respondent's bundle. Check whether all of the supporting evidence that you have provided to the Home Office is in the bundle. If something is missing and you have kept a copy, you should fax or send it to the court with a short letter explaining what it is. Make sure that you write your full name and Appeal Number on any letters to the Court.

If you have not kept a copy of the documents, you should make a list of the missing documents and write to the Home Office asking them to send them to you and to the Court. You should provide a copy of that letter to the Court. Mark any pages that you want to refer to in your hearing (for example, if your OASys report states that you are 'low risk' of reoffending).

b) Carefully read through the Home Office Notice of Decision.

c) Write a Witness Statement that states clearly why you disagree with each point in the Notice of Decision. That should be sent to the Court and the Home Office before the Hearing. The Witness Statement is a very important document for your hearing. It is your opportunity to explain to the Court why you should be allowed to stay in the UK.

d) Carefully read through your Witness Statement the day before the hearing. It is important that this is fresh in your memory because you will be asked questions about it at the hearing.

Remember: If you have not had time to prepare a Witness Statement before the hearing, write down on a sheet of paper the main reasons why you believe you should be allowed to stay in the UK. This will help to remind you what to say. You can give the Judge a copy of your written reasons on the day of the hearing.

e) Mark any key documents you want to refer to (e.g. if the OASys report says that you are 'low risk' of reoffending, you should mark that page);

f) Make sure that if you have any family or friends that wish to give evidence at your appeal then they have also prepared witness statements and that these have been provided to the Court and the Home Office Presenting Officers' Unit in advance. Make sure they know when the hearing is and what time to arrive at Court. They will also need to show proof of their immigration status in the UK, for example, a copy of their passport or status document. They should allow for being at Court the whole day. This is because, although the hearings are listed for 10am, they may not actually go before the Judge until much later in the day.

g) Gather together family photographs, birth certificates, school certificates and any documents that you think show your residence in the UK and what your life has been like with your family.

Where should I send all my supporting documents for my appeal hearing and when must I send them?

The FTT requires that you file all your evidence within 5 working days of the full appeal. It is good practice to index the documents and paginate them so that they can be easily referred to by the FTT. You or a friend can hand deliver the documents to the court. You must also serve a copy of your evidence on the Home Office Presenting Officers' Unit. Their address is at the bottom of any letters that you receive from the Court or you can call the FTT for their address. If you hand deliver documents, make sure that you are given a receipt. Otherwise you can post your evidence and make sure it is sent by recorded delivery and keep a copy for yourself.

What documents will I need to bring to Court?

The Respondent's Bundle and any other papers that you want to give to the Court that you have not already sent to the Court.

Who is in the court room on the day of the hearing?

- The Immigration Judge. There may be two Judges (called a Panel). The Judges are not part of the Home Office. They are part of the Court Service and are independent and impartial.
- The Home Office Representative. S/he is called a 'HOPO (Home Office Presenting Officer). Normally, the HOPO is a civil servant, not a lawyer. The HOPO is called the 'Respondent'.
- An interpreter, if you or your witnesses need one.
- The public. Immigration hearings are public, although members of the public do not normally attend.
- If the case is a 'Nexus' case, in that the offence that triggered deportation is related to gang activity or a history of offences, or what the Home Office sometimes calls 'non-conviction offences', police officers might attend court to give evidence in support of the Home Office.

The case will be in a small room in the Court. It is not like a criminal court. The FTT is meant to be a user-friendly Court and is more informal than a criminal court.

Will the Judge help me as I do not have a legal representative?

The Judge cannot take sides in the hearing. However s/he must explain the procedure to you, make sure that you understand what is happening, ensure that you are able to give your evidence and ensure that you have a fair hearing.

What happens at the hearing?

At the beginning of the hearing, the Judge will check that everyone has the correct papers. If you want to give the court papers you have brought with you on the day, you should give them to the court usher who will copy them for the court.

If there are papers that you have given to the Home Office earlier in your case that are not in the Respondent's bundle, you should explain to the Judge which documents are missing.

Remember: Don't wait until the day of the hearing to check the Respondent's bundle.

Giving your oral evidence in court

- If you have prepared a Witness Statement, you will be asked if the contents are correct. If you want to make any corrections or additions to the Witness Statement you should do so then.
- You will be asked questions about your case by the Home Office Presenting Officer. This is called your 'evidence in chief'. If you have prepared a Witness Statement in advance, that should reduce the number of questions that the HOPO needs to ask you.
- The Immigration Judge may ask you some questions.
- The HOPO might then ask you some more questions.

What is the procedure for my witnesses at the appeal?

The procedure for your witnesses in giving their evidence is the same as the procedure for you. They will need to wait outside the court room while you give your evidence. They will be called in once it is their turn to give evidence. Once everyone has given their evidence the final stage of the hearing, called 'submissions', will begin.

Checklist for giving your oral evidence in court

- Listen carefully to the question and make sure that you answer the question that is asked;
- If you do not understand a question, ask them to repeat it;
- Try not to get angry or upset at the questions. Answer them as clearly and honestly as you can;
- Address the First-tier Tribunal judge (the immigration judge) as 'Sir' if a man or 'Madam' if a woman.

Submissions

Once everyone has given their oral evidence, the next stage is called 'submissions'. The HOPO will make their submissions first, giving reasons why the appeal should be dismissed and why you should be deported.

S/he will rely on the reasons given in the Notice of Decision and on the 'oral evidence' in court. S/he may refer to country evidence and case law.

Once s/he has finished, you will have the opportunity to make your submissions. Do not interrupt the HOPO during their submissions, even if they say things that you do not agree with. Make a note of key points that you disagree with. You will then be able to explain these to the judge in your submissions. The judge might ask you to focus your submissions on particular points.

If the Home Office calls police officers as witnesses against me, can I ask them questions if I want to challenge what they are saying?

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Can I ask a friend or family member to speak for me at court?

No. The Tribunal will not allow anyone to speak for you or 'represent' you unless they are a registered immigration adviser qualified to represent in court or solicitor. However, you can ask for a friend or family member to be allowed to help you understand what is happening in court or to help you generally with your case. Your friend or family member can also be a witness.

Can my witness make any submissions?

No. Only the Appellant is allowed to make 'submissions'.

Will the judge give me a decision on the day?

No. The Judge has to consider all of the evidence in your case and give you a written decision setting down the reasons for the decision. There is no set time for this to be sent to you but it will normally be about four weeks after your hearing.

Remember: Always keep the Court informed of any change of address. It is important that the Court sends the decision to your correct address.

If I win my appeal at the First Tier Tribunal, will I be allowed to stay in the UK?

The Home Office has the right to appeal against the decision if it believes that the judge made legal mistakes in allowing the appeal. If the Home Office does not appeal, or is unsuccessful in their appeal, you will be allowed to stay in the UK.

In some cases where you already had indefinite leave to remain the Home Office may serve you with a new decision attempting to revoke or remove your indefinite leave. You will need to seek legal advice if that happens.

What should I do if the Judge refuses my case?

You can only appeal against the decision of the Judge on grounds of 'legal error', not just because you disagree with the decision. Examples of legal error would be if the judge had not provided clear reasons for the decision or had failed to show that he s/he had properly considered all of the evidence in your case.

If I want to appeal against the decision of the judge, who do I appeal to?

You appeal to the First-tier Tribunal for permission to appeal to the Upper Tier Tribunal. The appeal decision will come with an appeal form. The appeal deadline is 14 calendar days from the date that the decision is sent to you by the Tribunal. However, you can make a late appeal if you can show you have 'good cause'. You should attach any evidence that you have to show why you did not appeal in time, and you must act quickly to show that you have lodged the appeal as soon as you could do so.

If you think the judge has made legal mistakes in deciding your case, you should complete the appeal form. You should explain as clearly as possible what you believe the mistakes to be. Make sure that you write clearly and number each separate point.

If the First Tier Tribunal refuses to grant me permission to appeal, can I appeal further?

You can renew your application directly to the Upper Tier Tribunal

What can I do if the Upper Tier Tribunal refuses me Permission to Appeal?

Once you have had two refusals of permission to appeal, from the First-tier Tribunal (FTT) and the Upper Tier Tribunal (UTT), you cannot appeal further through the Tribunal system. In some, very limited, circumstances, it may be possible to challenge the refusal of the UTT) to grant you Permission to Appeal via judicial review. However, you would need will obtain specialist legal advice about this.

See other BID & University of Law factsheets on deportation

BID Factsheet 5 'Deportation Appeals: An overview', March 2015

BID Factsheet 6 'Deportation Appeals: Deportation of Nationals of the European Union (EU) European Economic Area (EEA)', March 2015

BID Factsheet 7 'Deportation Appeals: EEA nationals length of residence', March 2015

Go to BID's website <http://www.biduk.org/information-detainees/factsheets-detainees-english-other-languages> or contact BID for a copy (see back page for details). You can also ask library staff in the IRC or prison where you are being held to provide you with a copy.

GLOSSARY OF KEY TERMS

Immigration Asylum Chamber

This is the court that hears deportation appeals. It has two levels. The lower level, which hears first appeals is the First Tier Tribunal (FTT). The upper level is the Upper Tier Tribunal (UTT). The UTT hears appeals against decisions of the FTT.

Appellant

This is the name given to the person who appeals. You will be the Appellant in your appeal to the FTT.

Article 8

This refers to Article 8 (A8) of the European Convention on Human Rights (ECHR). It protects the right to respect for family and private life. Private life is the term used to refer to the life you have built up during your time in the UK through which you have integrated into life in the UK through friendships, work, study, involvement in community activities etc. However, the A8 right is a 'qualified right'. This is because an individual's right to family and private life must be balanced against the rights of the government to prevent crime and disorder and maintain immigration control.

'Best interests of the children'

Section 55 of the Borders, Citizenship and Immigration Act 2009 places a legal requirement on the government to treat the best interests of the children as a primary consideration when making any decision on immigration. It also requires the immigration court to treat the best interests of the children as a primary consideration when deciding a deportation appeal.

Case law

This is the name given to decisions of the higher courts which the lower courts, such as the FTT must follow. Case law on deportation and human rights must be carefully considered by the judge when deciding deportation appeals.

Determination

This is the name of the written decision of the judge. It explains whether the appeal is allowed or dismissed and the reasons.

Error of Law

This refers to legal mistakes in the decision of the First-tier Tribunal judge. For example, if the Judge has failed to take into account important evidence before him, failed to properly apply the Immigration Rules, or failed to follow binding case law. The error must be 'material' in that it is arguable that if the error had not been made, the judge would have reached a different decision in the appeal.

GLOSSARY OF KEY TERMS

Evidence-in-Chief

This is the name given to your written witness statement adopted at the hearing and to your oral evidence

Home Office Presenting Officer (HOPO)

This is the name given to the person who represents the Home Office at the Court.

The Human Rights Convention (ECHR) 1950

This sets down basic human rights in 'Articles' which everyone is entitled to enjoy.

Immigration Rules

This is the name given to the set of rules which govern who can enter and remain in the UK. The rules relating to deportation are found at Part 13 of the Immigration Rules.

Proportionality Test

This is the name given to the legal process of 'weighing up' or 'balancing' the competing interests of the government against those of the individual who is facing deportation and any family affected by the deportation. In deportation cases this normally involves balancing the interests of the government in maintaining law and order and immigration control, against the Article 8 right to respect for family and private life of the person facing deportation and their family.

'Public interest' in deportation

The law states that it is in the public interest to deport foreign national offenders. The Immigration Rules set down 'exceptions' to deportation being in the public interest if certain conditions are met or if there are 'exceptionally compelling circumstances' in a case.

Respondent

This is the name given to the party opposing the Appellant. In the FTT the Home Office is the Respondent.

Submissions

This is the name given to the last stage of the appeal hearing where the appellant and respondent give their summaries. The Home Office will make oral submissions to the judge stating why the appeal should be dismissed. You will then make your submissions to the judge stating why your appeal should be allowed.

Witness

This is the name given to a person who attends court to give oral evidence. For example, witnesses in your case may be your partner or a long term friend or a medical expert.

BiD Bail for
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Detainees

Bail for Immigration Detainees (BiD) is a registered Charity No. 1077187.

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