



Deportation Appeals for non-EEA Nationals

A Basic Overview

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

This leaflet is a guide to how to appeal against a decision to deport you.

If the Home Office has made a decision to deport you, you can appeal against that decision to the First Tier Tribunal (FTT) of the Immigration and Asylum Chamber (IAC)

What is Deportation?

Deportation means being forced to leave the UK and unable to return for at least 10 years. It is used for non-British citizens including people who have committed criminal offences. Foreign nationals who have overstayed their visas or breached the conditions of their permission to stay in the UK are normally forced to leave the UK by being removed (administrative removal) rather than by deportation. Once an individual has been deported they cannot lawfully return to the UK while the Deportation Order remains in force.

If the Home Office wants to deport you, they will give you a 'Notice of Decision to Deport'. This is a letter which explains the Home Office's reasons for wanting to deport you. You will usually be given a 'Deportation Order' at the same time.

Can I appeal against a decision to deport me?

There is no automatic right to appeal against deportation. A right of appeal is limited to the following Home Office decisions;

- A decision to refuse an asylum claim
- A decision to refuse a Humanitarian Protection claim
- A decision to refuse a human rights claim.
- A decision to revoke protection status (This is a decision that you are no longer entitled to keep your Refugee Status or Humanitarian Protection Status)
- A decision that you have no entitlement to remain under European law.

An asylum claim and Humanitarian Protection claim are made if you cannot safely be returned to your country because you face a real risk of serious harm there.

In most cases, a person facing deportation will have raised human rights grounds with the Home Office prior to the full Notice of Decision to Deport. The Notice of Decision to Deport is usually headed 'Decision to Refuse a Human Rights Claim' and usually has a right of appeal.

A human rights claim based on Article 8 grounds is a claim that to return you to your home country would be a breach of your right to respect for your family and/or private life. For example, you may have a partner or children in the UK or you may have lived in the UK for many years.

If I have not already made an asylum claim or a human rights claim, can I make a claim if I receive a decision to deport me?

The Home Office should give you a form called a '**One Stop Notice**'. This may be given to you before a decision has been made to deport you, or at the same time as the decision to deport you.

You must state on the form any reasons that you have not already told the Home Office for wanting to stay in the UK. This could be a claim based on family or private life or that it would not be safe for you in your home country. The One Stop Notice will have a date on it by which it should be returned to the Home Office. You must send the form back on time.

Is it important to fill in the One Stop Notice?

Yes, it is very important that you complete the form if you have any reasons that you want to stay in the UK that you have not already told the Home Office. You only need to write down the basic reasons. You can give more information to support your reasons later on.

If you do not complete the One Stop Notice, but you make a claim later to stay in the UK based on reasons that you could have raised in the One Stop Notice, the Home Office can 'certify' the claim on the grounds that you should have put your reasons down on the One Stop Notice. If your claim has been 'certified' it means that you will not be allowed to appeal against Home Office decision to the First-tier Tribunal.

What sort of things do I need to put in the One Stop Notice?

You need to explain all the reasons that you have for wanting to stay in the UK. This could be because you have family in the UK, especially if you have minor children, your length of residence in the UK, your lack of a family or social support network in your home country.

The One Stop Notice also asks you why your case should not be certified under s.94B. Certification of your case would mean that you could only appeal against the decision to refuse your human rights claim once you had been removed from the UK. The recent Supreme Court case of *Kiarie & Byndloss v SSHD [2017] UKSC 42* found that the system of certification of cases under s.94B was in breach of the Human Rights Act. You could use the following wording in the reply to the one stop notice:

The recent Supreme Court case of Kiarie & Byndloss v SSHD [2017] UKSC 42 has found that the system of certification under section 94B does not provide for an effective right of appeal and breaches the Human Rights Act 1998.

If I am removed before my appeal, I will not be able to effectively prepare my appeal from abroad because I will not be able to:

Gather the necessary evidence of my length of residence in the UK and of my integration into British society;

Gather the necessary evidence of the strength of my family life in the UK. In particular, I will not be able to obtain expert reports as may be required such as an Independent Social Work report to comment on my relationship with my children because the expert would need to be able to observe me with my children;

Obtain expert evidence on my risk of reoffending, such as a Forensic Psychologist report. This is because I would need to be present in the UK for the assessment by the expert to take place;

I need to be present in the UK to give oral evidence at my appeal hearing. This is because I need to be able to answer points taken against me by the Home Office through cross-examination;

I do not have access to video link facilities abroad to give evidence from abroad;

In any case, giving evidence by video link would be unfair as it would be too difficult for me to try to follow the hearing process from abroad on a small screen. I need to be able to follow references in the process to pages in the Home Office Appeal Bundle. I also need to be able to properly see and hear the Home Office representative, the Immigration Judge and all participants at my hearing so as to follow my appeal and to be able to give my evidence in a fair and effective manner.

BID has produced a leaflet on challenging certification under s.94B titled Deportation Appeals-Challenging the Home Office decision to deport you before you can appeal (Certification under Regulation 94B) and is available on our website www.biduk.org.

Does it matter if I return the One Stop Notice late to the Home Office?

It is very important that you try to return it on time. Returning it late can be another reason for the Home Office to 'certify' your case if your application is refused. However, **you can return the form after the deadline as long as you** write down all the reasons why it is late. The Home Office must take your reasons into account when deciding whether you had 'good reason' for returning it late.

What happens if my claim is refused and 'certified' on the grounds that I should have raised my claim with the Home Office earlier?

Certification on this ground will mean that you will not have a right of appeal to the First-tier Tribunal. However, you may be able challenge the decision to 'certify' your claim by taking your case to the High Court. You will have to show the court that the Home Office decision to 'certify' your case is unjust and that it has unfairly refused to accept your explanation for your delay in giving your reasons for wanting to stay in the UK. You should get legal advice immediately if you need to argue this and take your case to the High Court.

If my situation changes after I have sent back the One Stop Notice, do I need to tell the Home Office?

Yes. It is very important that you tell the Home Office if your situation changes or you have new reasons for wanting to stay in the UK after you have returned the One Stop Notice.

If I have a right of appeal against a decision to deport me can I stay in the UK while I appeal?

As explained above, the Home Office has the power to certify a case under s.94B which would prevent a person appealing from within the UK. However, the Supreme Court case of *Kiarie & Byndloss v SSHD* [2017] UKSC 42 found that the system of certification was in breach of the Human Rights Act 1998. If your case is certified, you should write to the Home Office and ask that the certificate is withdrawn in light of the Supreme Court case. If it is not withdrawn or the Home Office issues Removal Directions, you would need to obtain legal advice on taking a judicial review challenge against the Home Office.

A model letter that you can use to write to the Home Office can be found with the BID leaflet 'Deportation Appeals - Challenging the Home Office decision to deport you before you can appeal (Certification under Regulation 94B)' and is available on our website www.bid.org.uk.

What are the time limits for lodging my appeal against deportation if I can stay in the UK while I appeal?

If you are allowed an in-country right of appeal, the deadline to appeal is 14 calendar days after you were sent the Notice of Decision you wish to appeal against. It is assumed you will have received it the day after it was sent. Remember to make a note of the date that you received the decision and also keep the envelope if your decision is received by post.

Where do I lodge the appeal?

You can fax or post it to the First-tier Tribunal (Immigration & Asylum Chamber). The details will be on the appeal form.

Can I lodge a late appeal after the deadline has passed?

Yes. However, you must have **good reasons** and you must explain these on the appeal form. For example, it may be that you tried to find a lawyer to help you complete the form but were unable to on time, or that English is not your first language and you did not know how to complete it. You must however also show that you did everything you could to act quickly and to avoid any delay.

How should I fill out the appeal form?

You should read the Home Office letter giving the reasons for wanting to deport you carefully. Try to note down everything that you disagree with in the Home Office letter. If you do not have time to write down all your reasons for disagreeing with the letter, make sure you at least explain the most important ones. You can add more information and any documents or letters later on. The most important thing is to send the appeal within the time limit. If you have any documents or letters that help support your reasons, you should attach copies of these to the appeal form.

The appeal form gives me the choice for the appeal to be decided on the papers or at an oral hearing in a court.

Which is best?

It is always best to ask for an oral hearing rather than for a decision to be made on the papers.

What will my main grounds of appeal be?

The main grounds of appeal will be one or more of the following;

- You would face harm if returned to your home country
- You have lived a long time in the UK or you have family in the UK
- Someone has made you come to the UK to exploit you and made you do things that you don't want to do (for example work that you did not want to do for very little or no pay). If this happened, you may have been 'trafficked' to the UK.

Protection Grounds

Risk of harm in your home country

If you believe that you cannot safely return to your home country because others will harm you, you may be able to say that you should not be deported because you should be protected as a refugee under the Geneva Convention (1951) (the Refugee Convention) or under Article 3 of the European Convention on Human Rights that forbids torture, inhuman or degrading treatment or punishment.

If you believe you need protection as a refugee or under Article 3 you could be entitled to legal aid. You should seek the help of a legal aid lawyer to get free legal help with your case.

Trafficking

If someone has made you come to the UK and forced you to do things you don't/didn't want to do (being 'trafficked'). You should explain that you should not be deported because you are a victim of trafficking.

You may be entitled to legal aid to get free legal help with your case if you believe you are a victim of trafficking.

Human Rights Grounds – Family and Private Life in the UK

If you have lived in the UK for a long time and/or you have family in the UK, you should explain why you believe it would be unfair to deport you. If you have children in the UK, you should explain the way in which they would be affected if you were deported and why it is therefore in their best interests that you stay with them in the UK.

Can I get legal aid to pay for a lawyer to represent me if I cannot afford to pay a private lawyer?

Challenges to deportation based on family life and length of residence in the UK are excluded from legal aid. However, you may be able to make an application for legal aid under the 'Exceptional Funding' scheme. This provides legal aid for complicated cases. As deportation is a very complicated area of law, it is worth making an application for exceptional funding. You do not need a lawyer to make the application.

The BID factsheet '*Exceptional Funding—Applying for Legal Aid in Deportation Cases: A Guide for Individuals*' explains how you can make an application. The factsheet is on the BID website www.bid.org.uk

Will I have to pay a fee to lodge an appeal against a decision to make a deportation order?

It may sometimes be necessary to pay a fee to appeal. You do not have to pay the fee at the same time that you lodge the appeal. You should attach a covering letter to the Court asking if you have to pay and if you do what the correct fee is and how you should pay it.

BID has produced an advice factsheet on fees for appeal applications called '*Deportation Appeals - Fees for Deportation Appeals: A Basic Guide*'. This is available on the BID website at www.biduk.org.

When I have lodged an appeal, what documents will I get from the Court?

You will receive a Notice of Hearing (NOH) from the Court. This usually has two hearing dates. The first is a Case Management Review Hearing (CMRH). The second is the date for the full or main hearing. You should receive the NOH within a few weeks. However, you may have to wait a few months for your full or main hearing.

What is the Case Management Review Hearing (CMRH)?

The Case Management Review Hearing (CMRH) is where the tribunal can check if everything will be ready in time for the full hearing to go ahead. You or your representative may not need to be at this hearing, but the tribunal will tell you if it wants you to be there.

What documents will I get from the Home Office once I have appealed?

The Home Office will prepare a bundle of documents that will have information about your case. The bundle will usually include information about your immigration and criminal history and they will use this bundle in the appeal hearing to support their arguments about why you should be deported. Copies of this bundle will be sent to the Tribunal and to you or to your representative. You should look through the bundle and see what you disagree with and what you can show is wrong

Check the bundle to make sure that the Home Office has included copies of all the evidence that you previously sent to them. If they have not you need to make sure that you provide the court and the Home Office with your own copies of the documents. If you do not have copies you must ask the Home Office and the court to make sure that the Home Office provides copies to the court.

What if I need more time to prepare my appeal?

If you will not be ready for your appeal hearing, you can ask the Court to give you more time. This is called an 'adjournment request'. As soon as you know that you will need more time, you should write to the Court and the Home Office. You will have to explain why you need more time and when you will be ready for the hearing

If the written application for an adjournment is refused, you can still ask the judge on the day of the hearing for an adjournment. However, if the Judge refuses your request, you will need to be ready to go ahead with the hearing.

Will the Judge give me a decision on the day?

It is very unlikely that the judge will let you know the decision on the same day as the hearing. This is because he will need to read through all of the papers in the case before reaching a decision. The tribunal will send you a written decision, called a 'determination', usually between four to six weeks after the hearing.

If my appeal is refused by the First Tier Tribunal, can I appeal against the refusal?

You can appeal to the First Tier Tribunal for permission to appeal to the Upper Tier Tribunal (UTT) if you can show that the Judge made 'legal mistakes' in deciding your case. For example, if you believe that the Judge did not follow the case law set down by the High Court or did not take proper account of the evidence that was before the tribunal. You must appeal within the deadline which will be given on the letter which accompanies the Judge's decision. However, you can lodge a late appeal if you can show you have good reasons why you did not appeal within the deadline.

However, if you win your appeal, the Home Office also has the right to appeal against that decision.

KEEPING RECORDS

1. Keep a record of all phone calls & conversations you have with the Home Office, your offender manager/supervisor, and probation services

- Every time you have a telephone conversation with your offender manager/supervisor, probation services, the Offender Management Unit in your prison, or a Home Office official you should write down on paper what you talked about, the questions that you were asked, and the answers that you gave.
- Try to get the name and job title of the person you spoke to and write that down too, and put the day of the week, the date and the time as well. You should ask for their name at the start of the conversation.
- If the telephone conversation does not go well, or you hear something you don't like, you should keep calm and try not to get angry. When the phone call is finished write down as much as you can remember of what was said. You will then have a record of discussions that will help you to remember what was said, and which can be used as evidence in court.

2. Keep all notes you send and receive from your Offender Manager/ Supervisor or Home Office caseowner

- Every time you send a request to your Offender Manager or Home Office caseowner, make sure that you keep all your notes and their written responses. If they don't respond to one of your requests you should make a note on a piece of paper and keep the note.
- You will then have a record of your requests for information and help. This will help you to remember what was said, and you can use your notes as evidence in court.

3. Get proof of posting when sending letters and faxes

If you write letters or send a fax to try to obtain information you should:

- Keep a copy of the letter you sent and make a note on the copy of the date you sent it to be posted.
- Try to get 'proof of posting' from the Post Office so that you can prove to the Home Office or the court or tribunal that you have written the letter. If you are detained and have a visitor from the visitors' group at your IRC or prison you could ask them if they will help you with this, but not all groups will be able to help with this.

How to contact BID

By post:

Freepost RTSU-ZJCB-XCSX

Bail for Immigration Detainees (BID)

1b Finsbury Park Road

London

N4 2LA

Fax: 020 3745 5226

General enquiries: enquiries@biduk.org

Casework enquiries: casework@biduk.org

Advice Line: 020 7456 9750
(Mon-Thurs, 10am - 12 midday)

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