



Deportation Appeals

Fees for Deportation Appeals – A Basic Guide

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 prison at the end of their sentence.

- 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

The Article 8 Deportation Advice project (ADAP) is a project run by Bail for Immigration Detainees (BID) in collaboration with the University of Law (ULaw).

The project 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.

When is there a right of appeal against deportation from the UK?

Following the 2014 Immigration Act, there is no right of appeal against a decision to deport. However, in the majority of cases, a decision to deport will also be a refusal of a human rights claim, or an asylum (protection) claim, or a claim of a right to remain based on European law as an EEA national or family member of an EEA national.

There is a right of appeal against a refusal of a human rights claim or protection claim or a decision to expel under European law and that as a result you should be deported from the UK.

The Notice of Decision from the Home Office is the letter explaining the reasons for deportation and it is usually accompanied by a Deportation Order.

It will state 'Decision to Refuse a Human Rights Claim or Protection claim'. For EEA nationals or their family members, it will state 'Immigration (European Economic Area) Regulations 2006 Decision to a make a Deportation Order'.

When is a fee payable for an appeal against deportation?

A fee is payable to the Immigration Asylum Chamber for an appeal against the refusal of a human rights claim based on your family life in the UK and length of residence in the UK. This is known as an Article 8 human rights claim.

No fee is payable for an EU-related appeal where you are arguing that expulsion from the UK would breach your rights as an EU national or the family member of an EU national. See below on Fee Exemption for more information.

Are there any categories of people who do not have to pay the fee (that are 'exempt' from paying a fee)?

A fee is not payable if you are:

- Provided with asylum support funding by the Home Office under s.95 or s.98 of the 1999 Immigration & Asylum Act;
- In receipt of legal aid which pays for your legal representation. This is where the government pays for your lawyer so that you do not have to pay. Remember that legal aid is not available for Article 8 (family and private life claims or appeals in most cases).
- In receipt of support from the local authority under s.17 of the Children Act 1989, s.22 of the Children (Scotland) Act 1995, article 18 of the Children (Northern Ireland) Order 1995 or s.37 of the Social Services and Well-being (Wales) Act 2014.
- You are the person for whom accommodation is being provided by a local authority under s. 20 of the Children Act 1989, s.25 of the Children (Scotland) Act 1995, article 21 of the Children (Northern Ireland) Order 1995 or section 76 of the Social Services and Well-being (Wales) Act 2014.
- The Home Office waived the fee for the application that the refusal notice you are appealing relates to.

A fee is also not payable if you are appealing against the following Home Office decisions:

- An appeal against the revocation ('cancellation') of protection status (e.g. cancellation of your grant of Refugee Status).
- An appeal that your removal would breach your rights as an EU national or the family member of an EU national.
- A decision where you have been detained and your decision letter was sent by the Detained Asylum Casework Team (DAC or DIA) at the Home Office. The Home Office decision letter will state if this applies to you.
- A decision that you should be deprived of British citizenship.

How much is the fee?

The fee is £140 for an oral hearing and £80 for a 'paper hearing'. An oral hearing is when you and/or your witnesses give evidence at the Tribunal. A 'paper hearing' is when the court considers the appeal just on the paperwork provided to it by the appellant (the person appealing) and by the Home Office.

Although it is more expensive, it is always best to have an oral hearing. Even if you are removed from the UK before the appeal is heard and may be unable to give evidence yourself, your witnesses such as your partner or family members can attend to give evidence. Also, if you have a legal representative, they can attend to make arguments on your behalf.

When does the fee have to be paid?

The fee should be paid at the time that the appeal is lodged. However, if you cannot pay the fee, you should still lodge the appeal in time. It is very important that you do not lodge the appeal late, just because you cannot pay the fee at the time you lodge it. You can ask the Tribunal if they can allow you not to pay the fee (to 'remit' the fee) based on your financial circumstances (see below).

How can the fee be paid?

The appeal form explains how the fee must be paid. You can pay by:

- a. Credit card
- b. Debit card
- c. BACS
- d. International money transfer

You cannot pay by cheque or cash.

If you complete the appeal form on-line, you can pay online. If you complete the form by hand you can write your card details on the form and either post or fax it to the Tribunal.

Can somebody such as a friend or relative pay for me?

Yes.

Do I have to pay if I am in prison or in immigration detention?

You are not exempt from paying a fee just because you are in prison or immigration detention, although no fee is payable if you have been detained and the Home Office decision was sent by the Detained Asylum Casework team (DAC or DIA).

However, if you cannot pay the fee, you can ask the Tribunal for a 'fee remission' (see below) so that you do not have to pay the fee.

FEE REMISSION REQUESTS

What if my appeal is not exempt from a fee but I cannot afford to pay?

If you are not exempt from paying a fee, but you cannot afford to pay, you can ask the Tribunal for a 'fee remission' so that you do not have to make a payment. You will need to prove that there is no-one who can reasonably be expected to help you with the fee, such as a family member/partner, because of 'exceptional' financial circumstances¹.

How do I ask the Tribunal to grant me fee remission?

When you lodge the appeal you should also enclose a short covering letter. The letter can be hand written and should be headed 'Article Seven Remission Application'. The letter must:

- Clearly state that you cannot afford to pay the fee and request a fee remission
- Be signed and dated by you
- Enclose as much supporting evidence as you can to show why you cannot pay

The application should be sent to:

'Article Seven Remission Application'
First-tier Tribunal (Immigration and Asylum Chamber)
PO Box 6987
Leicester
LE1 6ZX

A sample letter is included at the end of this booklet.

Evidence is very important as the Tribunal will need proof of your financial circumstances and why you cannot pay the fee.

What if I am appealing from abroad?

If you're appealing from abroad and need to apply for the fee to be remitted, the supporting evidence that you provide to the Tribunal must be in English or attach a translation into English.

The translation must be by a professional translation organisation. You cannot just provide a translation into English by yourself or a friend or family member.

If the evidence of your finances is not in pound sterling (£) you must provide a conversion of the finances into pound sterling. You can use an online conversion service for this.

It is important that you do this because the Tribunal will not translate documents into English or convert a foreign currency into pounds sterling to check whether you meet the test for a fee remission.

What sort of situations might count as 'exceptional' financial circumstances' for a fee remission?

The categories below are examples of situations which might be considered 'exceptional' financial circumstances justifying fee remission:

- You are detained in an Immigration Removal Centre or in prison custody and do not have any money to pay or anyone who can help with the fee.
- You are not working and do not have a regular source of income, for example, you may rely on friends to give you money for basic daily necessities. If so, it would be helpful for your friend to write a short letter confirming this and stating why they cannot afford to pay the fee for you.
- Your partner has low paid work or is receiving benefits and so cannot pay the fee. Your partner should write a short letter to the Tribunal explaining their financial situation and why they cannot afford to pay. If they are receiving social security benefits, they must also provide documentary evidence that they receive benefits such as a recent letter from the Benefits Agency or a current bank statement showing payment of the benefits into the account.
- You/your partner may have received threats of legal action due to non-payment of household bills or housing costs. If so, you should provide copies of these to the Tribunal.

Can a friend or relative request the fee remission for me?

No, only you, or your legal representative if you have one, can request the fee remission. A third party cannot do this on your behalf, unless the third party is acting for a child².

What if I cannot get the statement or evidence from my partner before the appeal must be lodged?

You should lodge the appeal in time with the covering letter explaining your financial circumstances and asking for a fee remission. Explain you are waiting for supporting documentary evidence from you partner and that you will provide this immediately you receive it.

Once I have lodged the appeal with the request for a fee remission, when will I hear back from the Tribunal?

The Tribunal should write back to you within about 14 calendar days.

What happens if I lodge the appeal without paying a fee but do not ask for the fee remission?

The Tribunal will write to you and give you a deadline by which time the fee must be paid. This is usually at least two weeks from the date of the letter. If this happens, you should write to the Tribunal to request a fee remission, as described above. ***It is very important that you do not ignore this letter. If the Tribunal does not hear from you before the deadline to pay, the appeal will not be processed for a hearing.***

What happens if I have requested a fee remission but the Tribunal does not accept my application?

You can write back to the Tribunal to explain that you believe the decision not to grant you a fee remission is wrong and ask that it be reconsidered. Remember to put your **appeal reference number** on your letter. The reference number will be on the letter from the Tribunal demanding the fee.

Do I have a right of appeal against a decision of the Tribunal not to grant me a fee remission?

The only avenue for appeal is through Judicial Review. You would need to seek advice from a solicitor about this. If you are detained, you should book an appointment with the solicitors that run the Duty Advice Desk.

Notes

Glossary of key terms

Appellant

This is the name given to the person who appeals. You will be the appellant in your appeal to the First-tier Tribunal.

Home Office Presenting Officers Unit (HOPOU)

This is the section of the Home Office that represents the Home Office at the Immigration and Asylum Chamber.

Immigration and Asylum Chamber

This is the court that hears deportation appeals. It has two levels. The lower level is the First-tier Tribunal (FTT). The higher tier is the Upper-tier Tribunal (UTT).

Respondent

This is the name given to the party opposing the Appellant. In the First-tier Tribunal, the Home Office is the Respondent.

Useful Guidance

First- tier Tribunal (Immigration & Asylum Chamber) Fees Guidance

<http://hmctsformfinder.justice.gov.uk/courtfinder/forms/t495-eng.pdf>

<https://formfinder.hmctsformfinder.justice.gov.uk/t495a-eng.pdf>

The First-tier Tribunal (Immigration and Asylum Chamber) Fees Order 2011

<http://www.legislation.gov.uk/uksi/2011/2841/contents/made>

The First-tier Tribunal (Immigration and Asylum Chamber) Fees Order 2016

<http://www.legislation.gov.uk/uksi/2016/928/made>

Fee Remission Letter Example

'Article Seven Remission Application'
First-tier Tribunal (Immigration and Asylum Chamber)
PO Box 6987
Leicester
LE1 6ZX

Date:

Your Name:

Your Home Office reference number:

Your address/place of detention:

Your Appeal Reference (if known):

Dear Sir/Madam

Re: Article Seven Remission Application

I would like to apply for a fee remission for my appeal because of my exceptional financial circumstances.

1) I cannot pay because:

State your reasons.

2) I am able to provide the following documentary evidence of my financial circumstances:

List the documents that you are enclosing.

If you do not have the documents, state when you expect to receive them and to provide them to the Tribunal.

3) I do not have any family member who can pay the fee for me.

State your partner's financial circumstances (If applicable).

List the supporting documentary evidence of your partner's financial circumstances that you are enclosing.

If you do not have the documents, state when you expect to receive them and to provide them to the Tribunal.

Yours sincerely

Signed.....
ENCS

Dated.....

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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