



A basic guide to making an application to revoke a Deportation Order for Non-EEA Nationals based on family and/or private life (Article 8) in the UK

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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

Who is this guide for?

This guide is for non-EEA nationals or their family members, who have a Deportation Order in force. It will be in force if a person received a Decision to Refuse a Human Rights claim and deportation decision and did not appeal or an appeal was unsuccessful and appeal rights are exhausted. A person may still be in the UK or they may have been deported.

What is an application to revoke a Deportation Order?

An application to revoke a Deportation Order is an application to 'cancel' a signed Deportation Order. It is done through a written application called 'Further Submissions' which explain the reasons why maintaining the Deportation Order breaches your human rights.

It is often called a fresh Human Rights Application. However, the Home Office will decide whether the Further Submissions meet the legal test to be treated as a 'Fresh Human Rights Claim' that attracts a right of appeal to the Immigration Asylum Chamber if the application is refused (see below 'Can I appeal if the Home Office refuses my application?')

If I am still in the UK, when can I make an application to revoke or cancel the Deportation Order against me?

An application can be made once a signed Deportation Order is in force. This may be because you have lost all your appeals in the Immigration and Asylum Chamber and cannot appeal any further, (known as 'Appeal Rights Exhausted'(ARE)), or because you did not appeal against the decision to deport you.

However, if only a short time has passed, you will need to show there has been a significant change in your circumstances since the Immigration Tribunal ruled that it would not breach your human rights to deport you, or since the Home Office decision to deport you if you did not appeal.

If I have already been deported from the UK, when can I make an application from abroad to revoke the Deportation Order?

For those who have already been deported from the UK, the Immigration Rules set out the periods of time a person normally needs to wait before considering revocation.

For those sentenced to less than 4 years imprisonment, the period is 10 years and for those sentenced to 4 years or more it is considered that permanent exclusion from the UK is justified.

An application to revoke a Deportation Order may be made before 10 years have passed. However, you will need to provide strong reasons and supporting evidence that the Deportation Order is breaching your human rights.

Can I return to the UK while the Home Office is deciding my application to revoke the Deportation Order?

No. You cannot return to UK while your application is being decided by the Home Office. If you do return, it will be illegal entry in breach of the Deportation Order, which is a criminal offence. If your application is successful and your Deportation Order is revoked or cancelled, you can apply afterwards in the normal way for Entry Clearance (a visa) to come to the UK.

What factors will the Home Office take into account when considering my application to revoke the Deportation Order?

The Immigration Rules at paragraph 390 state that the Home Office will consider all the circumstances of a case, including:

- I. the grounds on which the order was made;
- II. any representations made in support of revocation;
- III. the interests of the community, including the maintenance of effective immigration control;
- IV. the interests of the applicant, including any compassionate circumstances.

In the case of a 'Foreign Criminal' the Home Office will consider whether the 'Exceptions to deportation' being in the public interest at paragraphs 399 and 399A of the Immigration Rules apply. If the exceptions do not apply, it will only be in exceptional circumstances that the public interest in maintaining the deportation order will be outweighed by other factors.

What are the Exceptions to Deportation being in the public interest?

The Immigration Rules set out the exceptions to deportation being in the public interest at paragraphs 399 and 399A. These are based on family life with a 'qualifying child' or 'qualifying partner' and or your length of lawful residence in the UK. However, the tests to be met to qualify under the exceptions are high. The rules are set out below, but for more information and guidance on what these terms mean, see the BID Leaflet 'Deportation Appeals: Preparing your Article 8 Deportation Appeal', available on BID's website.

What are the Immigration Rules applying to the person being deported or seeking revocation of a Deportation Order?

Paragraph 399A requires the person:

- To have been lawfully living in the UK for most of their life; and
- To be socially and culturally integrated in the UK; and
- For there to be very significant reasons why they could not integrate into life in the country to which they are being deported.

If the person has a child:

Paragraph 399a requires the following:

- The applicant has a genuine and subsisting relationship with a child aged under 18; and
- The child is British or the child has lived in the UK for 7 years before the deportation decision; and
- It would be 'unduly harsh' for the child to live in the country where the person is being deported and
- It would be 'unduly harsh' for the child to remain in the UK without the person being deported.

If the person has a partner:

Paragraph 399b requires the following:

- The applicant has a genuine and subsisting relationship with the partner; and
- The partner is in the UK and is a British citizen or has permanent residency; and
- The relationship began when the person facing deportation was in the UK lawfully and their immigration status was not uncertain (e.g. time-limited); and

It would be 'unduly harsh' for the partner to be forced to live abroad with the person who is being deported; and

How will the Home Office decide my application?

For applications made in the UK, the Home Office will decide whether to grant permission to remain. If it decides not to grant such permission, it will apply the 'fresh claim test' to decide whether the further submissions amount to a 'fresh claim'. If it decides the fresh claim test is met, there will be a right of appeal to the Immigration and Asylum Chamber.

The '**Fresh Claim Test**' in the Immigration Rules at paragraph 353 states:

'The submissions will amount to a fresh claim if they are significantly different from the material that has previously been considered. The submissions will only be significantly different if the content:

(i) had not already been considered; and

(ii) taken together with the previously considered material, created a realistic prospect of success, notwithstanding its rejection. This paragraph does not apply to claims made overseas.

This test means that you cannot just rely on information that has already been considered and rejected by the Home Office or the Immigration Asylum Chamber.

There must be a significant change of circumstances and new evidence to be considered. For instance, the Immigration judge might have found that you did not have 'family life' with your partner, but it may be that now you are married or have a baby, which is new evidence of family life.

The Home Office will consider ALL the evidence in your case, both the old evidence and the new evidence, and any Immigration Asylum Chamber appeal decisions, to decide whether to grant you permission to remain.

If the Home Office decides not to grant you permission to remain, it will decide whether, if you were to present the evidence to an Immigration Judge at the Immigration Asylum Chamber, you would have a '*realistic prospect of success*'.

If the Home Office decides you would have a 'realistic prospect of success' the Fresh Claim test will be met.

What is meant by a 'realistic prospect of success'?

This means whether, if the evidence was before an immigration judge in the Immigration and Asylum Chamber, the judge could arguably take a different view of the case from the view of the Home Office and allow the appeal.

How do I make an application to revoke the Deportation Order when I am still in the UK?

An application is made in writing to the Home Office. You should attach all supporting documentation that you believe supports your case. If you wish, you can complete the Home Office Further Submission Form, available from the Home Office at: <https://bit.ly/2mKhZfC>.

The form is useful as guidance for the type of information and evidence that you should provide. However, you do not have to use the form. You can just make a written application and attach the supporting documents.

What sort of supporting documents should I include?

You should include all documents that you believe support your claim that it would be a breach of your human rights for the Deportation Order to remain in force. What those documents are will depend on your individual circumstances. However, most applications will need to include the following:

- A witness statement from you explaining your current circumstances and any significant changes since your appeal was finally dismissed by the Tribunal;
- A witness statement from your partner (if applicable);
- Evidence of the ages and nationality of your children (e.g. Birth certificate/passport copy) or length of residence in the UK if they are not British Citizens (if applicable);
- Evidence of the impact upon your children and/or your partner if they are separated from you or if they are forced to leave the UK with you;
- Evidence of any physical or mental ill-health relied upon;
- Evidence of any new rehabilitation work to show that you are at low risk of reoffending;

Where should the “Further Submissions” based on Article 8 be sent?

The application should be sent to your case owner at the Home Office. More information can be found in the Home Office guidance publication, ‘Asylum and human rights policy instructions – Further Submissions 19 February 2016. This is available at: <https://bit.ly/2uUbf3e>

What if I am in an Immigration Removal Centre or being held in immigration detention in prison?

You can hand a copy of the application to staff at the Immigration Removal Centre or to the Home Office official based at the prison.

Should I keep a full copy of my Further Submissions application?

Yes. Also, if you are posting it, you should send it by Recorded Delivery. If you are handing the application in to the Home Office in person, you should ask for a receipt as it is evidence that the Further Submissions were given to the Home Office.

How long will it take for the Home Office to decide the application?

There is no time limit for the Home Office to make a decision on the application. However, it usually takes a number of months.

If I make my application while I am still in the UK, can I be removed from the UK while my Further Submissions are being considered by the Home Office?

No. You will have the right to remain in the UK while your submissions are being considered by the Home Office.

If I make an application while I am in the UK can I still be detained?

Yes, but you can use the fact that you have made an application as evidence that you cannot be removed from the UK while the Home Office is deciding your application and that you will not abscond if you are granted bail.

If I make my application while I am still in the UK, can I obtain financial support and/or accommodation from the Home Office while I am waiting for a decision?

You may be able to apply for Section 4 support if you are destitute. Information on Section 4 support and how to apply can be found on the Home Office guidance, 'Asylum support, section 4(2): policy and process Version 1.0 16 February 2018. This is available on the Home Office website at: <https://bit.ly/2uU8nTY>

Can I appeal if the Home Office refuses my application?

Your right of appeal will depend on how the Home Office decides to refuse your claim. If the Home Office refuses to grant you permission to remain but accepts that your "Further Submissions" meet the 'Fresh Claim test' you will have a right of appeal to the Immigration Asylum Chamber.

If the Home Office decides that the Fresh Claim test is not met, you will not have a right of appeal to the Immigration Asylum Chamber. However, you may be able to challenge the decision that the Fresh Claim test is not met through 'judicial review' in the Upper-tier Tribunal.

If my application is successful, what type of permission to remain will I be given?

In most cases, a grant of 30 months limited 'leave to remain' (permission to remain) is given. An application for renewal must be made before the 'leave' or permission expires.

Useful resources

Home Office 'Criminality: Article 8 ECHR Cases, version 6, 22 February 2017

<https://bit.ly/2NMxoaH>

Home Office 'Asylum and human rights policy instruction 'Further submissions' Version 9.0, 19 February 2016 <https://bit.ly/2uUbf3e>

Glossary of Key Terms

Foreign Criminal

This is defined in section 117D(2) of the Nationality, Immigration and Asylum Act 2002. It is a person who;

- Is not a British citizen,
- Has been convicted in the UK of an offence, and who has been sentenced to a period of imprisonment of at least 12 months, or
- Has been convicted of an offence that has caused serious harm, or
- Is a persistent offender.

Deportation Order

This is the Order stating that the Home Office has decided that a person should be deported. It also states that the person cannot lawfully return to the UK while the Deportation Order is in force. It is usually served at the same time as the Home Office letter providing full reasons for the decision to deport and the appeal forms.

Revocation of a Deportation Order

This describes the formal cancellation of a Deportation Order by the Home Office.

Further Submissions

This is the name given to the further reasons and supporting evidence provided to the Home Office stating why a person should be allowed to stay in the UK. It is called 'further' submissions because it is made once a first application has been refused by the Home Office or finally dismissed by the Immigration Asylum Chamber if there was an appeal hearing.

Fresh Human rights Application

Once the Home Office receives "Further Submissions" from a person within the UK, if it decides not to grant permission to remain, it will decide whether the submissions should be treated as a 'Fresh Human Rights Claim'.

Paragraph 353

This refers to paragraph 353 of the Immigration Rules. This paragraph defines the test the Home Office must apply when deciding whether the "Further Submissions" should be treated as a 'Fresh Human Rights Claim' of time.

The 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.

Immigration Asylum Chamber

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.

Judicial review

This is a legal process through which some decisions of the Home Office can be challenged in the Upper-tier Tribunal or in the High Court. If the Home Office refuses to accept that Further Submissions meet the test to be treated as a 'Fresh Claim', it may be possible to challenge the decision through judicial review.

Leave to remain

This is a general term meaning 'permission to remain' in the UK. This may be Indefinite Leave to Remain or it may be Limited Leave to Remain for a specific period of time.

BiD Bail for Immigration Detainees

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

Registered in England as a Limited Company No. 3803669.

Accredited by the Office of the Immigration Services Commissioner Ref. No. N200100147.

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 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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