Course Documentation from ILPA Course DT 664
Introduction to the Nationality, Immigration and
Asylum Act 2002 Part 5 - Appeals
Judith Farbey, Jim Gillespie 22 May 2003

Overview of the new appeals regime

A0009

Important documents to know about and read:

- *The Nationality, Immigration and Asylum Act 2002 (Commencement No 4) Order 2003*, made on 14 March 2003

  This is a crucial document because it sets out transitional provisions between the old appeals regime under the 1999 Act and the new appeals regime under Part 5 of the 2002 Act.

  In essence, the new appeals regime will not apply to cases where the appealed decision was taken prior to 1 April 2003.

  But certain sections of Part 5 do apply to all decisions, whenever taken, so it is worth looking at the details of the Commencement Order.

- *The Immigration and Asylum Appeals (Procedure) Rules 2003*

  The vast bulk of the new Rules apply immediately to all appeals, whether lodged before or after 1 April 2003.

- *The Special Immigration Appeals Commission (Procedure) Rules 2003*

- *Part 54 CPR, section II* - deals with statutory review

  - Being generally interpreted so as to apply only to cases where the Home Office decision that underlies the application for review is taken on or after 1 April 2003.

- *The Immigration and Asylum Appeals (Fast Track Procedure) Rules 2003*

  The Rules came into force on 10 April 2003.

- *Chief Adjudicator's Practice Direction On Trial Bundles*

  In force on 31 March 2003
  Available now on EIN

- *Practice Direction on Citation of Determinations* - in draft form at the moment; will apply to all IAA hearings

- *Practice Direction on Fast Track Procedure* dated 16 April 2003.

Transitional Provisions

These are set out in *The Nationality, Immigration and Asylum Act 2002 (Commencement No 4) Order 2003*, made on 14 March 2003. These are complex as they make provision for appeals outstanding under the previous legislation (the 1971 Act, the 1999 Act, the 1993 Act and the 1988 Act). However the key point is that the new appeal provisions (defined as sections 82-99 and 101-103 of the 2002 Act apply to all decisions made on or after 1 April 2003.

Appeals already pending on 1 April will continue to be governed by the previous legislation.

Note the contrast with **appeals procedures** – the new procedure rules for appeals apply to appeals pending on 1 April.

What decisions are appealable and on what grounds?

See sections 82 and 84. The former provides the appeal right, the latter identifies the potential grounds of appeal.

- Section 82(1) provides the right of appeal to an adjudicator in respect of an "immigration decision". Subsection (2) exhaustively defines those immigration decisions that are appealable.

- The immigration decisions that are appealable largely reflect provisions in Part IV of 1999 Act [but see below "Which appeal rights are completely removed?"].

- **New appeal right** in respect of a decision to make a deportation order following a court recommendation [included in section 82(2)(j)].

- See also section 82(2)(f): revocation of indefinite leave under section 76.

- Section 84(1) exhaustively sets out the available grounds of appeal (an appeal "must be brought on one or more of the following grounds"). Available grounds largely reflect present regime.

- The new regime reverses decision of Court of Appeal in *R (Kariharan and Koneswaran) v Secretary of State for the Home Department; R (Kumarakuparan) v Secretary of State for the Home Department* [2002] INLR 383, where the Court of Appeal held that removal directions were appealable decisions relating to an entitlement to enter or remain within the meaning of s. 65 1999 Act). This is because the appeal clearly does now arise only in respect of the exhaustively defined *underlying* immigration decision. See for example section 80(2)(h) "a decision that an illegal entrant is to be removed from the United Kingdom by way of directions under paragraphs 8 to10 of Schedule 2 to the Immigration Act 1971" (*i.e.* not the giving of directions for removal themselves).

Which appeal rights are completely removed?

There is no longer **any** right of appeal against:

- Refusal of asylum where ELR is granted for one year. But note that a further grant of one year's ELR will attract an asylum appeal right [section 83].

- Decisions taken outside the rules i.e. under concessions and policies [section 88(2)(d)].

- Destination specified in RDs.

- Validity of RDs (s. 66(2) 1999 Act - on facts of case "no power in law" on ground given).

Subsequent appeals: shoring up the one-stop concept

The certification regime contained in s. 73 1999 Act (**limitation on further appeals**) has been retained, albeit in modified form.

- Section 96(1) provides for certification in respect of "new" immigration decisions by Secretary of State or IO where person "was notified" of earlier appeal right against another immigration decision (whether or not exercised), where new decision responds to a "request or application" made to delay applicant's removal (or removal of a family member) and there is no other legitimate purpose for making it. Certification prevents section 82(1) appeal being "brought or continued".

- Section 96(2) provides for certification in respect of immigration decision which "relates to an application or claim which relies on a *ground*" either raised on appeal against another decision, or which should have been included in a statement of additional grounds, or which could have been so raised on an appeal against another immigration decisions in respect of which the person "chose not to exercise a right of appeal". Again certification prevents an appeal being "brought or continued".

- Section 96(3) prevents reliance on a ground of appeal if certified that the ground was considered in another appeal.

- Section 96(5) applies the regime, whether or not person has left and returned to the UK.

- Gone is any notion of whether matters "could reasonably" have previously been raised.

- Note that by schedule 6, para. 4, the section 96 regime applies equally where the earlier decisions/ appeals have been taken or exercised under the 1999 Act regime.

What is the date for determining the facts of the case?

- **Date of hearing: ALL in country appeals whether asylum or non-asylum** This marks the end of the principle in *R v Immigration Appeal Tribunal ex parte Kotecha* [1982] Imm AR 88. Under this principle, in non-asylum cases, the only admissible evidence was evidence which existed at the date of the decision or which was reasonably foreseeable at that date.

- Thus, it will be important to keep up to date with a client's circumstances: if circumstances change between date of decision and date of hearing, s/he will be expected to deal with all aspects of those circumstances at the hearing. If Maria marries one day before her appeal hearing, her appeal hearing will be her **one chance** to make Article 8 arguments **before an adjudicator**.

- **Date of decision: Entry clearance appeals and appeals against refusal of a certificate of entitlement to the right of abode:** "the adjudicator may consider only the circumstances appertaining at the time of the decision to refuse" [section 85(5)].

Does the fast track appeals regime for certified claims remain?

- No. Certification under para 9(4) and (5) of Sched 4 to the 1999 Act [basically, 'manifestly unfounded' certification] was repealed on the passing of the Act [section 162(2)(w)]. Other categories of certification were repealed on commencement of Part 5 on 1 April 2003.

Non-suspensive appeals

See sections 94 and 115, which apply to asylum claims and human rights claims.

Clearly unfounded claims

- No in-country right of appeal if the Secretary of State certifies that the claim is "clearly unfounded".

  Meaning of "clearly unfounded"
  "It is the view of parliamentary counsel that 'clearly' and 'manifestly' mean the same...I confirm that we will not argue that 'clearly' means anything different from 'manifestly'...Our commitment to treat 'clearly' as 'manifestly' is unswerving" (*Hansard*, H.L. Vol. 638, col.342 per Lord Falconer of Thoroton QC on behalf of the Government).

  Safe countries of origin: clearly unfounded presumption
  A claim by a person who "is entitled to reside" in any of the ten EU candidate countries (Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia) **is** to be certified as clearly unfounded unless Secretary of State is satisfied that claim "is not clearly unfounded".

  Secretary of State can "add [or remove] a State, or part of a State to [or from] the list" where Secretary of State is satisfied that there is in that State or part thereof "no serious risk of persecution" and removal "would not in general contravene the UK's obligations under the Human Rights Convention".

  The Secretary of State has added seven countries to the list: Albania; Bulgaria; Jamaica; Macedonia; Moldova; Romania; Serbia and Montenegro.

Safe third country: new certification power in addition to the safe third country provisions of sections 11 and 12 of the 1999 Act

- No in country right of appeal if the Secretary of State certifies that it is proposed to remove a person to country of which he is not a national or citizen and there is "no reason" to believe that the person's human rights will be breached) (section 94(7)).

- Section 94(8) contains the same presumption in respect of such third countries as is contained in s. 11(1) 1999 Act in relation to a "member State".

- Section 115 applies essentially the same regime by way of "transitional provision" preventing appeals under sections 65 or 69 1999 Act.

Leading case: R (ZL) v Secretary of State for the Home Department [2003] EWCA Civ 25, which held:

(i) Fast track procedure is not inherently unfair.

(ii) Sets down a test for determining whether a claim is clearly unfounded.

(iii) "Where an applicant's case does turn on an issue of credibility, the fact that the interviewer does not believe the applicant will not, of itself, justify a finding that the claim is clearly unfounded... Only where the interviewing officer is satisfied that nobody could believe the applicant's story will it be appropriate to certify the claim as clearly unfounded on the ground of lack of credibility alone".

Only in-country remedy is judicial review.

New Procedure Rules

New Rules are contained in the **Immigration and Asylum Appeals (Procedure) Rules 2003** (SI2003/652 (L.16))

The new rules are in force from 1 April 2003. In general the new rules apply to all appeals pending on 1 April 2003 to which the 2000 Rules applied immediately before 1 April and any appeal brought on or after 1 April 2003: rule 61.

There are however exceptions:

- Where the decision appealed against was made before 1 April the time limit for appealing is the old one

- An application for permission to appeal to the IAT against a determination made before 1 April is subject to the old time limit

- The old time limit for applying to the IAT for permission to appeal to the CA applies where the IAT determination was before 1 April. Similarly, in such a case the old provision for a "review" of an IAT decision on grounds of administrative error etc. continues to apply

- The old provisions for a "review" on grounds of administrative error continue to apply where there is no right of appeal to the IAT because the claim has been certified before 1 April 2003 under schedule 4, para. 9 of the 1999 Act

Key changes

Overriding objective of rules has been redrafted:

- It applies generally to the rules: see rule 4

- Now refers to the interests of the parties and the wider public interest

Time limits: broadly these are the same. However – persons in detention must give notice of appeal (or apply for permission to appeal) within 5 days. See also notes on "fast-track" appeals.

Notice of appeal (rule 8): there are some potentially important changes:

- It is not enough to give grounds of appeal – reasons in support of the grounds must also be given

- The notice of appeal form states that "standard templates" should not be used and that the grounds should relate to the appellant's individual case

- Where a representative signs the form he/she must certify that the form is completed in accordance with the appellant's instructions

Out of time appeals – procedures have been changed:

- The reasons for late submission of the appeal notice must be sent with the appeal notice together with any evidence relied on

- Issue of timeliness of appeal and whether to allow an appeal out of time will be considered without a hearing on the basis of papers

- Time for appealing may be extended where by reason of special circumstances it would be unjust not to do so

Notice of appeal

Giving notice of appeal is now governed by rule 8. Note that the rule requires notice to set out the grounds of the appeal and "give reasons in support of those grounds".

The prescribed form states that a standard template should not be used and that the grounds should relate specifically to the appellant's case. Note also the apparent requirement to state on the form whether or not it is a legally aided appeal.

Closure dates – rule 13

The new Rules introduce a system whereby when an appeal is adjourned a "closure date must be set:

- The closure date is the date by which the appeal must be heard or determined without a hearing

- The closure date will normally be a maximum of 6 weeks from the date of the adjourned hearing

- A closure in excess of 6 weeks can be fixed (or a closure date varied) either by agreement of the parties or, exceptionally, where the adjudicator is satisfied that the appeal cannot be justly determined by the closure date and there is an identifiable date by which the appeal can be justly determined

Appeals to Tribunal

The new Rules introduce important changes concerning appeals to the Immigration Appeal Tribunal: see notes below

Bail

This is now dealt with by Part 5 of the Rules. Changes in procedure include a requirement on the HO to serve on the applicant a written statement of the reasons for opposing bail no later than 2 pm on the day before the hearing (or as soon as practicable if the HO was served with notice of the application less than 24 hours before the hearing.

Directions

The power to give directions (rule 38) is substantially the same as under the previous Rules. However an adjudicator no longer has power to allow an appeal without substantive consideration on the ground of the HO's failure to comply with a provision of the Rules or with directions. An appeal may still be dismissed without substantive consideration where the appellant does not comply with directions (rule 45(2).

It is anticipated that adjudicators are in future going to take a stricter line than previously in cases of late submission of documents with a greater use of the power to exclude documents.

Jurisdiction of Immigration Appeal Tribunal

See sections 101-102.
For procedure, see the Immigration and Asylum Appeals (Procedure) Rules 2003 paragraphs 14-25.

- Appeal to the Tribunal lies only with **permission** to appeal.

- Appeal to the Tribunal will lie only on a **point of law**.

- In determining an appeal, the Tribunal may consider "evidence which concerns a matter arising after the adjudicator's decision" [section 102(2)]. Except in entry clearance cases, where the Tribunal can consider "only the circumstances appertaining at the time of the decision to refuse".

- Thus, it appears that the Tribunal can overturn the adjudicator's determination on a point of law but go on to determine the outcome of the appeal by reference to factual and legal matters.

- As before, if the Tribunal goes on to determine the outcome of the appeal, it can consider factual evidence, both written and oral, that was not before the adjudicator.

- As before, the Tribunal can re-determine the whole or parts of the appeal itself.

➢ Issues:

Can submission of fresh evidence to the Tribunal be treated as giving rise to an error of law on the part of the adjudicator?

Can error/omission of previous representatives before the adjudicator be treated as giving rise to an error of law on the part of the adjudicator?

Maria fails to attend her asylum appeal because she is run over by a bus on the way to Taylor House. Consequently, the appeal is determined in her absence and dismissed. Can the Tribunal grant Maria leave to appeal upon submission of a hospital report?

There is some case law to effect that fresh evidence may ground an error of law in a lower tribunal: *The Queen on the application of Tewedros Tadesse Haile v IAT* [2002] INLR 283; *R v Criminal Injuries Compensation Board ex parte A.* [1999] 2 AC 330. It is suggested that the meaning of an error of law is open to some argument and may fall to be decided on an incremental, case by case basis. Alternatively, if fresh evidence arises after appeal to an adjudicator, it may fall to be considered by the Secretary of State as a fresh claim for asylum (see HC 395 para.346).

- Time limit for application for permission to appeal: 10 days but 5 days in detained cases and 28 days in cases where appellant is outside UK [Procedure Rules para 16].

- Grounds of appeal must:

  Identify the alleged errors of law in the adjudicator's determination; and

  Explain why such errors made a material difference to the decision [Procedure Rules paragraph 17].

- Respondent's notice

  A respondent who wishes
  - to apply for permission to appeal to the Tribunal against the adjudicator's determination or
  - ask the Tribunal to uphold the adjudicator's determination for reasons different from or additional to those given by the adjudicator

  must file a respondent's notice with the IAA and serve it on the appellant, within such period as the Tribunal may direct or otherwise within 10 days after the respondent is served with notice that the appellant has been granted leave to appeal [Procedure Rules paragraph 19].

Certificates of no merit

See the 2003 Procedure Rules paragraph 24.

- A certificate of no merit can be made when the Tribunal determines an appeal or an application for permission to appeal.

- Test:

  the Tribunal considers that-

  (a) the appeal or application to the Tribunal is vexatious or unreasonable; or

  (b) where the appellant was the party who appealed to an adjudicator, that appeal was vexatious or unreasonable.

- Where the Tribunal issues a certificate of no merit, the appellate authority must serve a copy of the certificate on-

  (i) every party; and

  (ii) any legal representative acting for the party against whom the certificate is issued.

  In addition, it must serve on the LSC a copy of the certificate and the determination of the Tribunal upon the appeal or application for permission to appeal.

Statutory review

See section 101(2)-(3).

- No more judicial review of Tribunal refusals of leave to appeal.
- Challenge is by way of an application for statutory review.
- An application for statutory review is:
  - An application to the High Court
  - To be determined by a single judge
  - On the papers only
  - With no right of appeal to the Court of Appeal.
- Governed by CPR Part 54 section II.
- Transitional provisions: see The Nationality, Immigration and Asylum Act 2002 (Commencement No 4) Order 2003: generally interpreted to mean that will only apply where Home Office decision made prior to 1 April 2003.
- Introduces a mechanism for challenging IAT decisions to grant leave to appeal [ie Home Office could challenge your grant of leave to appeal and vice versa] [see CPR Part 54.25.
- Applications to be made on a special form, called an application notice, to Administrative Court.
- Various documents MUST be filed with the application notice: see CPR Part 54.22.
- Written submissions must be filed with the application notice, setting out:
  The grounds upon which it is contended that the Tribunal made an error of law; and
  reasons in support of those grounds.
- 14 day time limit from deemed receipt of IAT decision.
- Discretion to extend time but only in exceptional circumstances.
- Application to extend time must be made in the application notice and supported by written evidence verified by a statement of truth.
- Court will not consider evidence that was not submitted to the adjudicator or the Tribunal unless satisfied that there were good reasons why it was not submitted to the adjudicator or Tribunal.
- Test for granting statutory review is at CPR Part 54.25:

Where the Tribunal refused permission to appeal, the court will reverse the Tribunal's decision only if it is satisfied that:

(a) The Tribunal may have made an error of law and
(b) Either-
  (i) the appeal would have a real prospect of success; or
  (ii) there is some other compelling reason why the appeal should be heard.

Where the Tribunal granted permission to appeal, the court will reverse the Tribunal's decision only if it is satisfied that:

(a) The appeal would have no real prospect of success; and
(b) There is no other compelling reason why the appeal should be heard.

- High Court Judge may reserve costs of application to be determined by IAT. If so, costs will be determined by the IAT under the Immigration and Asylum Appeals (Procedure) Rules 2003 paragraph 25.

  - Issues:

    Stricter test than for judicial review?

    High Court stepping into shoes of IAT - ie re-determining permission application de novo?

  - *Watch out for* - knock on effect on judicial review cases - eg will duty to be prompt in judicial review proceedings mean that those who lodge remaining judicial review applications much after 14 days from IAT refusal will be dismissed for lack of promptness [ie statutory review time limit sets a benchmark]?

Fast track appeals

See the Immigration and Asylum Appeals (Fast Track Procedure) Rules 2003.

- The new fast track appeals system came into effect on 10 April 2003. It applies potentially to all asylum claimants from: Bangladesh, Bolivia, Botswana, China, Ghana, Ivory Coast, Kenya, Nigeria, Pakistan, South Africa, Sri Lanka, Turkey.

- Other countries may be added, depending on how Home Office regards success of pilot.

- Fast track claimants will be detained at Harmondsworth.

- The current timetable for processing fast track cases is about 19 days from the claimant's arrival at Harmondsworth to exhaustion of IAA appeal rights.

- The Legal Services Commission has set up a duty scheme for solicitors to represent persons who are processed through the fast track. We understand that the LSC will contact an approved solicitor directly and allocate a fast track case to him/her.

- The Home Office should consider any reasoned request for an individual case to be taken out of the fast track.

Time scale for appeals:

- Grounds of appeal to adjudicator "not later than 2 days after the day on which the appellant is served with notice of the decision against which he wishes to appeal"[Fast Track Rules paragraph 6].

- Adjudicator may not extend the time limit unless satisfied that "because of circumstances outside the control of the appellant or his representative, it was not practicable for notice of appeal to be given" in time [Rules paragraph 6].

- Home Office must file and serve appeal documents "not later than 2 days after the day on which notice of appeal is given" [Rules paragraph 6].

- IAA must fix a hearing date "as soon as practicable after the respondent" files the appeal documents [Rules paragraph 7].

- The hearing date must be "not later than 2 days after the respondent" files the appeal documents 'or as soon as practicable thereafter if the appellate authority is unable to arrange a hearing within that time' [Rules paragraph 7].

- Notice of hearing must be served not later than noon on the day before the hearing [Rules paragraph 7].

- Written determination of the appeal to be served "not later than one day after the day on which the hearing of the appeal finishes" [Rules paragraph 8].

- Similarly draconian time-table for appeals to IAT and for applications to IAT for permission to appeal to Court of Appeal.

Application of principal Procedure Rules to Fast Track Procedure Rules

Large parts of the principal Procedure Rules are in effect incorporated into the Fast Track Procedure Rules: see paragraphs 5, 10, 16, 20 and 24.

Watch out for:

- Adjournment provisions [Rules paragraphs 8 and 14]
- Documents to be filed by respondent on an application for permission to appeal to IAT [Rules paragraph 12]
- Provisions for Tribunal to determine appeal without a hearing [Rules paragraph 11, 14]: *enables Tribunal to determine an appeal without an oral hearing at the same time as granting permission to appeal.*
- Provisions for adjudicator or Tribunal to transfer an appeal out of fast track [Rules paragraphs 23 and 24].

Practice Directions

The 2002 Act now specifically includes a statutory power for Practice Directions to be made concerning the conduct of appeals: **section 107.**

Citation of authorities

A PD restricting the citation of authorities has been proposed in a draft form. It envisages only a selected number of Tribunal determinations being made publicly available in future. Permission will have to be sought in writing to cite other determinations of the IAT.

Trial bundles

A PD came into force on 31 March 2003 setting out the proper practice for the content and submission of bundles to adjudicators: see Practice Direction CA 1 of 2003.

Key points:

- Appellant's bundle should include skeleton argument, chronology, witness statements, all relevant documents relied on, including country information
- Passages relied on in lengthy documents should be clearly identified
- Bundles should be paginated and indexed and, if large, contained in a ring binder or lever arch file
- Parties should not rely on an adjudicator having judicial knowledge of any country information

PD CA2 of 2003 deals with fast track cases – bundles may be submitted at hearing.

NEW TIMETABLE FOR FAST-TRACK PROCESS UNDER 4TH DRAFT OF PROCEDURE RULES

Day 1	Arrival, Application and Legal Rep Interview
Day 2	Legal Rep Interview (if not Day 1) and Asylum Interview
Day 3	Service of Decision (Asylum and RLE)
Day 4	First of 2 days in which to appeal (Rule 6(1))
Day 5	Second of 2 days in which to appeal

Day 6 and 7 Weekend (Assuming application is made on a Monday).

Day 8	Appeal bundle lodged with IAA no later than 10.30am and IAA to issue notice of hearing no later than noon that day (Rule 7(3)(b))
Day 9	Adjudicator hearing
Day 10	Promulgation of adjudicator's determination
Day 11	First of 2 days in which to seek permission to appeal (Rule 11(1))
Day 12	Second of 2 days in which to seek permission to appeal, service of copy of application notice on respondent (Rule 11(3))

Day 13 and 14 Weekend (Assuming application is made on a Monday).

Day 15	Respondent to file statement and written submissions with IAT as per Rule 12 / respondent is served copy of application if not on day 10
Day 16	IAT determine permission application, either refusing leave determining the appeal or fixing a hearing (Rule 14(2)(a) or (b)) / respondent files statement and written submissions with IAT / first of 10 days to seek Statutory Review
Day 17	IAT determine permission application if respondent served copy on day 11 / day before Tribunal hearing (Rule 14(4)(a)) / first of 10 days to seek Statutory Review
Day 18	Tribunal hearing / day before Tribunal hearing
Day 19	Tribunal promulgate determination / Tribunal hearing

Day 20 and 21 Weekend (Assuming application is made on a Monday).

Day 22	First of 2 days to seek permission to appeal to CofA (Rule 17(1)) / Tribunal promulgate determination
Day 23	Second of 2 days to seek permission to appeal to CofA / first day
Day 24	Tribunal determines permission to CofA application / second day to seek permission
Day 25	Tribunal determines permission to CofA application

Day 27 and Day 28 Weekend (Assuming application is made on a Monday).

Day 30 or 31 Last of 10 days to seek Statutory Review

Day 34 and Day 35 Weekend (Assuming application is made on a Monday).

Day 37 or 38 Admin Court promulgates determination of application

Home Office

Immigration and Nationality Directorate
Harmondsworth Fast-Track Project
7th Floor Advance House Wellesey Road Croydon
Direct Line (020) 8604 6050 Fax (020) 8604 6601

Rebecca Bowry
Legal Services Commission

Your reference:

Our Reference:

Date: 26th March 2003

Dear Rebecca,

I write in reply to a matter that you raised at the Fast-Track Project Board on 19th March, when you asked for an indication of the nationalities that we would seek to put through the pilot in the initial few weeks.

You are already aware that the nationalities we consider suitable for the Fast-Track process are those currently accepted for Oakington but excluding the 17 nationalities already subject to the Non-Suspensive Appeals process. However, due to difficulties in the availability of interpreters to legal representatives and low arrival figures of some nationalities at the relevant ports, we have decided initially to focus on a shorter list of nationalities as listed below:

Bangladesh	Ivory Coast	Sri Lanka
Bolivia	Kenya	Turkey
Botswana	Nigeria	
China	Pakistan	
Ghana	South Africa	

The nationalities that were eligible but where there are difficulties obtaining the relevant interpreters are:

Cameroon	Mozambique	Togo
Malawi	Namibia	Zambia
Mauritania	Senegal	

The nationalities that were eligible but where the arrival numbers are currently low are:

Benin	Congo (Brazzaville)	Mali	Swaziland
Brazil	Djibouti	Mozambique	Tanzania
Burkino Faso	Equatorial Guinea	Namibia	Togo
Central African Republic	Gabon	Niger	Uganda
Chad	Malaysia	Senegal	Ukraine

I hope that this information is helpful to you.

Yours sincerely,

Nick Banks
Harmondsworth Fast-Track Project

OFFICE OF THE CHIEF ADJUDICATOR
IMMIGRATION APPELLATE AUTHORITY

His Honour Judge Henry Hodge OBE
Chief Adjudicator

Taylor House, 88 Rosebery Avenue,
Islington, London EC1R 2QU
020 7862 4307
Fax: 020 7862 4308
Email Henry.Hodge@courtservice.gsi.gov.uk

PRACTICE DIRECTION

FAST TRACK PROCEDURE

16th April 2003

Comments

The Chief Adjudicator is grateful for the responses to the Fast Track Procedure Rules draft practice direction. He comments as follows:

The practice direction has been amended by the addition of the last sentence so witness statements stand as evidence in chief. If documents are to be relied on they must be filed and served 12 hours before or at the hearing. Without them they cannot be relied on. To that extent their production is mandatory. Best practice requires that there should be a witness statement ready for the hearing. Both sides will need to have available background information for the adjudicator if that is to be relied on in support of the case.

1. The expedited Fast and Standard Track Practice Direction CA1 of 2002 dated 22nd April 2002 is revoked.

2. The Standard Directions provided for in Practice Direction CA8 of 2001 dated 27th July 2001 will not apply in relation to cases under the Fast Track Procedure Rules 2003. Standard Directions in Fast Track cases will be:-

> Documents, including witness statements, country reports, skeleton arguments and any chronology to be relied on at the hearing must be filed in a paginated bundle at the hearing or where practicable twelve hours before. Copies of all such documents are to be provided to every other party to the appeal. Copies of documents in a language other than English must be accompanied by a full certified translation.
>
> Witness statements are to stand as evidence in chief at the hearing.

His Honour Judge Henry Hodge OBE
Chief Adjudicator

CA2 of 2003

PRACTICE DIRECTION

March 2003

TRIAL BUNDLES.

1. Parties shall have regard to the guidance, best practice and commentary below in the preparation of trial bundles for hearings before adjudicators.

GUIDANCE

2. Each party shall prepare the bundle on which it relies.

3. The respondent's bundle shall consist of:

(a) The documents submitted to the appellate authority in accordance with the Procedure Rules from time to time in force.

(b) Notes of any relevant interview had with the appellant not included in (a) above.

(c) Such further documents as may be considered relevant.

(d) Any relevant country report which may be submitted at the hearing.

4. The appellant's bundle shall consist of:

(a) A chronology to include the dates of incidents on which the appellant relies.

(b) All witness statements to be relied on as evidence.

(c) Any relevant documents on which the appellant relies as evidence, including country reports, expert and medical reports.

(d) Translations of any of the above documents.

(e) A skeleton argument.

BEST PRACTICE

5. The best practice for the preparation of bundles follows:

(a) All documents must be relevant, be presented in logical order and be legible.

(b) Where the document is not in the English language, a typed translation of the document must be inserted in the bundle next to the copy of the original document together with details of the identity and qualifications of the translator.

(c) If it is necessary to include a lengthy document, that part of the document on which reliance is placed should, unless the passages are outlined in any skeleton argument, be

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highlighted or clearly identified by reference to page and/or paragraph number.

(d) Bundles submitted must be paginated and have an index showing the page numbers of each document in the bundle.

(e) The skeleton argument or written submissions should define and confine the areas at issue in a numbered list of brief points. Each point should refer to any documentation in the bundle on which the appellant proposes to rely and its page number.

(f) Where reliance is placed on a particular case or text, photocopies of the case or text must be provided in full for the adjudicator and the other party.

(g) Large bundles should be contained in a ring binder or lever arch file, capable of lying flat when opened.

COMMENTARY

6. Adjudicators recognise the constraints on those representing the parties in appeals at adjudicator level in relation to the preparation of trial bundles. The Direction does not therefore make it mandatory in every case that bundles in exactly the form prescribed must be prepared. If parties to appeals fail in individual cases to present documentation in a way which complies with the Practice Direction, it will be for the individual adjudicator to deal with any such issue.

7. Much evidence in asylum and immigration appeals is in documentary form. Representatives preparing bundles need to be aware of the position of the adjudicator who is coming to the case for the first time. The better a bundle has been prepared, the greater it will assist the adjudicator to reach a decision which is fair and in accordance with the law. Bundles should contain all the documents that the adjudicator will require to enable him or her to reach a decision without the need to refer to any other file or document.

8. It is not practical in appeals at adjudicator level to require there to be an agreed trial bundle. It remains vital that both parties inform the other at an early stage of all and any documentation on which they intend to rely.

9. The parties cannot rely on the adjudicator having judicial notice of any country information or background reports in relation to the case in question. If either party wish to rely on such country or background information, copies of the relevant documentation must be produced.

10. The Guidance Note for good practice on the preparation of trial bundles dated February 2000 is withdrawn.

11. This Practice Direction comes into force on 31st March 2003.

His Honour Judge Henry Hodge OBE
Chief Adjudicator

Trial Bundles

CA1 of 2003