ILPA information sheet


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# Immigration Act 2014: Appeals

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The Immigration Bill is now law, having received Royal Assent on 14 May 2014. The Act is not yet in force. It will introduce sweeping changes across a range of areas of immigration, asylum and nationality law. This Information Sheet outlines the changes that this Act will make to immigration appeals.

**Loss of Appeal Rights**

One of the biggest impacts of the Act will be the removing of rights of appeal to the First-tier Tribunal (Immigration and Asylum Chamber). From now on, appeals to this independent Tribunal will only be possible against decisions to refuse claims for asylum or human rights protection, and then only on grounds that the decision breaches rights under the Refugee Convention or the European Convention on Human Rights respectively. This means that there will no longer be a right of appeal for other fundamental errors, for example when the decision maker has relied on the wrong law, applied the wrong Immigration Rule, or ignored part of the evidence. It also means that a person will not be able to invoke human rights or asylum grounds as a ground of appeal after a decision has been made – they will have to make a separate asylum or human rights application.

In the absence of a right of appeal to the Tribunal, the only option will be to request an internal administrative review under a new procedure being set up by the Home Office: to ask the Home Office to look at its decision again. If the Home Office does not change its mind, then the only route of challenge will be judicial review in the High Court, a costly and time-consuming remedy. The structure for legal aid payments to lawyers has recently changed making it more difficult for those who cannot pay and need legal aid to find a lawyer to bring a judicial review (see further ILPA's Information Sheet, Judicial Review: Update 1).

The residence test for legal aid, if brought into effect as planned in August[1], would limit access to judicial review for persons who do not have a lawful right of residence in the UK

[1] A legal challenge is currently pending

(see ILPA's Information Sheet: Legal Aid 18). Thus if the Home Office wrongly denies someone leave to be in the UK, the consequences are:

- Unless it is a human rights and / or asylum case, the person will have no appeal to the Tribunal;
- The person can request an internal administrative review by the Home Office;
- If the internal review does not alter the outcome, the person's only route of challenge is judicial review;
- Access to judicial review has been recently limited and there are proposals further to limit it in the near future, meaning that fewer people will be able to avail themselves of this remedy (see ILPA's recent series of Information Sheets on Judicial Review).

**Article 8**

Article 8 of the European Convention on Human Rights protects the fundamental right to respect for family and private life. This article is often invoked by people seeking to remain in the UK, who have personal and familial ties here. In 2012 the Government tried to set out what Article 8 should mean in the Immigration Rules. This was unsuccessful: the courts held that the Rules could not limit Article 8 in the manner intended. The Government is, in the Immigration Act, once again attempting to constrain the interpretation and application of Article 8. This will be done by attempting to require the Courts to have regard to Parliament's view of the circumstances in which it is in the public interest for different types of person, with relationships to different types of person in the UK, to be forced to leave the UK. It remains to be seen what effect this will have in practice.

**Out of country appeals for persons being deported**

Another important change made by the Act is to give the Secretary of State power to remove the right of an in-country appeal for a person being deported from the UK following a court recommendation for deportation or the decision of the Secretary of State that the person's presence in the UK is not conducive to the public good. The new power cannot be used against a person who is being deported as family member of a principal facing deportation. The Secretary of State will be able to "certify" a case as one in which no 'serious, irreversible harm' would be caused to the person, or their family member(s) if they were removed and remained outside the UK for the duration of their appeal. Thus a person could be removed from the country, despite a risk of their human rights being breached, as long as the high threshold of 'serious irreversible harm' is not reached. Any appeal would then be heard while the person is abroad. The Government has committed not to avail of this power for asylum or Article 3 cases (where there is a risk of torture or inhumane / degrading treatment); thus it is family life (Article 8) cases which are the primary target of the new power.

It is important to recall that deportation and Article 8 cases were taken out of scope for legal aid by the Legal Aid Sentencing and Punishment of Offenders Act 2012; now not only will deportees have to represent themselves, they will have to attempt to do so from outside the UK.