



# Nationality, Immigration and Asylum Act 2002

## 2002 CHAPTER 41

### PART 5

#### IMMIGRATION AND ASYLUM APPEALS

##### *Appeal to adjudicator*

#### **81 Adjudicators**

- (1) The Lord Chancellor shall appoint adjudicators for the purposes of this Part.
- (2) A person is eligible for appointment as an adjudicator only if he—
  - (a) has a seven year general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990 (c. 41),
  - (b) is an advocate or solicitor in Scotland of at least seven years' standing,
  - (c) is a member of the Bar of Northern Ireland, or a solicitor of the Supreme Court of Northern Ireland, of at least seven years' standing, or
  - (d) has legal or other experience which in the Lord Chancellor's opinion makes him suitable for appointment.
- (3) The Lord Chancellor—
  - (a) shall appoint one of the adjudicators as Chief Adjudicator,
  - (b) may appoint one of the adjudicators as Deputy Chief Adjudicator,
  - (c) may appoint one or more adjudicators as Regional Adjudicator, and
  - (d) may appoint one or more adjudicators as Deputy Regional Adjudicator.
- (4) The Chief Adjudicator shall perform such functions as the Lord Chancellor may assign to him.
- (5) The Deputy Chief Adjudicator—
  - (a) may act for the Chief Adjudicator if he is unable to act or unavailable, and

---

*Status: This is the original version (as it was originally enacted).*

---

- (b) shall perform such other functions as the Chief Adjudicator may delegate or assign to him.
- (6) A Regional Adjudicator shall perform such functions as the Chief Adjudicator may assign to him.
- (7) A Deputy Regional Adjudicator—
  - (a) may act for the Regional Adjudicator whose deputy he is if the Regional Adjudicator is unable to act or unavailable, and
  - (b) shall perform such other functions as may be delegated or assigned to him by the Regional Adjudicator whose deputy he is or assigned to him by the Chief Adjudicator.
- (8) Schedule 4 (which makes further provision about adjudicators) shall have effect.

## **82 Right of appeal: general**

- (1) Where an immigration decision is made in respect of a person he may appeal to an adjudicator.
- (2) In this Part “immigration decision” means—
  - (a) refusal of leave to enter the United Kingdom,
  - (b) refusal of entry clearance,
  - (c) refusal of a certificate of entitlement under section 10 of this Act,
  - (d) refusal to vary a person’s leave to enter or remain in the United Kingdom if the result of the refusal is that the person has no leave to enter or remain,
  - (e) variation of a person’s leave to enter or remain in the United Kingdom if when the variation takes effect the person has no leave to enter or remain,
  - (f) revocation under section 76 of this Act of indefinite leave to enter or remain in the United Kingdom,
  - (g) a decision that a person is to be removed from the United Kingdom by way of directions under section 10(1)(a), (b) or (c) of the Immigration and Asylum Act 1999 (c. 33) (removal of person unlawfully in United Kingdom),
  - (h) a decision that an illegal entrant is to be removed from the United Kingdom by way of directions under paragraphs 8 to 10 of Schedule 2 to the Immigration Act 1971 (c. 77) (control of entry: removal),
  - (i) a decision that a person is to be removed from the United Kingdom by way of directions given by virtue of paragraph 10A of that Schedule (family),
  - (j) a decision to make a deportation order under section 5(1) of that Act, and
  - (k) refusal to revoke a deportation order under section 5(2) of that Act.
- (3) A variation or revocation of the kind referred to in subsection (2)(e) or (f) shall not have effect while an appeal under subsection (1) against that variation or revocation—
  - (a) could be brought (ignoring any possibility of an appeal out of time with permission), or
  - (b) is pending.
- (4) The right of appeal under subsection (1) is subject to the exceptions and limitations specified in this Part.

### **83 Appeal: asylum claim**

- (1) This section applies where a person has made an asylum claim and—
  - (a) his claim has been rejected by the Secretary of State, but
  - (b) he has been granted leave to enter or remain in the United Kingdom for a period exceeding one year (or for periods exceeding one year in aggregate).
- (2) The person may appeal to an adjudicator against the rejection of his asylum claim.

### **84 Grounds of appeal**

- (1) An appeal under section 82(1) against an immigration decision must be brought on one or more of the following grounds—
  - (a) that the decision is not in accordance with immigration rules;
  - (b) that the decision is unlawful by virtue of section 19B of the Race Relations Act 1976 (c. 74) (discrimination by public authorities);
  - (c) that the decision is unlawful under section 6 of the Human Rights Act 1998 (c. 42) (public authority not to act contrary to Human Rights Convention) as being incompatible with the appellant’s Convention rights;
  - (d) that the appellant is an EEA national or a member of the family of an EEA national and the decision breaches the appellant’s rights under the Community Treaties in respect of entry to or residence in the United Kingdom;
  - (e) that the decision is otherwise not in accordance with the law;
  - (f) that the person taking the decision should have exercised differently a discretion conferred by immigration rules;
  - (g) that removal of the appellant from the United Kingdom in consequence of the immigration decision would breach the United Kingdom’s obligations under the Refugee Convention or would be unlawful under section 6 of the Human Rights Act 1998 as being incompatible with the appellant’s Convention rights.
- (2) In subsection (1)(d) “EEA national” means a national of a State which is a contracting party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (as it has effect from time to time).
- (3) An appeal under section 83 must be brought on the grounds that removal of the appellant from the United Kingdom would breach the United Kingdom’s obligations under the Refugee Convention.

### **85 Matters to be considered**

- (1) An appeal under section 82(1) against a decision shall be treated by the adjudicator as including an appeal against any decision in respect of which the appellant has a right of appeal under section 82(1).
- (2) If an appellant under section 82(1) makes a statement under section 120, the adjudicator shall consider any matter raised in the statement which constitutes a ground of appeal of a kind listed in section 84(1) against the decision appealed against.
- (3) Subsection (2) applies to a statement made under section 120 whether the statement was made before or after the appeal was commenced.
- (4) On an appeal under section 82(1) or 83(2) against a decision an adjudicator may consider evidence about any matter which he thinks relevant to the substance of the

---

*Status: This is the original version (as it was originally enacted).*

---

decision, including evidence which concerns a matter arising after the date of the decision.

- (5) But in relation to an appeal under section 82(1) against refusal of entry clearance or refusal of a certificate of entitlement under section 10—
- (a) subsection (4) shall not apply, and
  - (b) the adjudicator may consider only the circumstances appertaining at the time of the decision to refuse.

## **86 Determination of appeal**

- (1) This section applies on an appeal under section 82(1) or 83.
- (2) The adjudicator must determine—
- (a) any matter raised as a ground of appeal (whether or not by virtue of section 85(1)), and
  - (b) any matter which section 85 requires him to consider.
- (3) The adjudicator must allow the appeal in so far as he thinks that—
- (a) a decision against which the appeal is brought or is treated as being brought was not in accordance with the law (including immigration rules), or
  - (b) a discretion exercised in making a decision against which the appeal is brought or is treated as being brought should have been exercised differently.
- (4) For the purposes of subsection (3) a decision that a person should be removed from the United Kingdom under a provision shall not be regarded as unlawful if it could have been lawfully made by reference to removal under another provision.
- (5) In so far as subsection (3) does not apply, the adjudicator shall dismiss the appeal.
- (6) Refusal to depart from or to authorise departure from immigration rules is not the exercise of a discretion for the purposes of subsection (3)(b).

## **87 Successful appeal: direction**

- (1) If an adjudicator allows an appeal under section 82 or 83 he may give a direction for the purpose of giving effect to his decision.
- (2) A person responsible for making an immigration decision shall act in accordance with any relevant direction under subsection (1).
- (3) But a direction under this section shall not have effect while an appeal under section 101 or a further appeal—
- (a) could be brought (ignoring any possibility of an appeal out of time with permission), or
  - (b) has been brought and has not been finally determined.
- (4) A direction under subsection (1) shall be treated as part of the determination of the appeal for the purposes of section 101.