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Nationality, Immigration and Asylum Act 2002

2002 CHAPTER 41

PART 5 U.K.

IMMIGRATION AND ASYLUM APPEALS

Procedure

VALID FROM 04/04/2005

[^{F1}103A Review of Tribunal's decision U.K.]

- (1) A party to an appeal under section 82 or 83 may apply to the appropriate court, on the grounds that the Tribunal made an error of law, for an order requiring the Tribunal to reconsider its decision on the appeal.
- (2) The appropriate court may make an order under subsection (1)—
 - (a) only if it thinks that the Tribunal may have made an error of law, and
 - (b) only once in relation to an appeal.
- (3) An application under subsection (1) must be made—
 - (a) in the case of an application by the appellant made while he is in the United Kingdom, within the period of 5 days beginning with the date on which he is treated, in accordance with rules under section 106, as receiving notice of the Tribunal's decision,
 - (b) in the case of an application by the appellant made while he is outside the United Kingdom, within the period of 28 days beginning with the date on which he is treated, in accordance with rules under section 106, as receiving notice of the Tribunal's decision, and
 - (c) in the case of an application brought by a party to the appeal other than the appellant, within the period of 5 days beginning with the date on which he

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is treated, in accordance with rules under section 106, as receiving notice of the Tribunal’s decision.

- (4) But—
- (a) rules of court may specify days to be disregarded in applying subsection (3) (a), (b) or (c), and
 - (b) the appropriate court may permit an application under subsection (1) to be made outside the period specified in subsection (3) where it thinks that the application could not reasonably practicably have been made within that period.
- (5) An application under subsection (1) shall be determined by reference only to—
- (a) written submissions of the applicant, and
 - (b) where rules of court permit, other written submissions.
- (6) A decision of the appropriate court on an application under subsection (1) shall be final.
- (7) In this section a reference to the Tribunal’s decision on an appeal does not include a reference to—
- (a) a procedural, ancillary or preliminary decision, or
 - (b) a decision following remittal under section 103B, 103C or 103E.
- (8) This section does not apply to a decision of the Tribunal where its jurisdiction is exercised by three or more legally qualified members.
- (9) In this section “the appropriate court” means—
- (a) in relation to an appeal decided in England or Wales, the High Court,
 - (b) in relation to an appeal decided in Scotland, the Court of Session, and
 - (c) in relation to an appeal decided in Northern Ireland, the High Court in Northern Ireland.
- (10) An application under subsection (1) to the Court of Session shall be to the Outer House.]

Textual Amendments

- F1** S. 103A inserted (4.4.2005) by [Asylum and Immigration \(Treatment of Claimants, etc.\) Act 2004](#) (c. 19), **ss. 26(6), 48(1)-(3)** (with transitional provisions in [Sch. 2](#)); [S.I. 2005/565](#), **art. 2** (with savings in arts. 3-9)

VALID FROM 04/04/2005

[^{F2}103B Appeal from Tribunal following reconsideration **U.K.**

- (1) Where an appeal to the Tribunal has been reconsidered, a party to the appeal may bring a further appeal on a point of law to the appropriate appellate court.
- (2) In subsection (1) the reference to reconsideration is to reconsideration pursuant to—
- (a) an order under section 103A(1), or
 - (b) remittal to the Tribunal under this section or under section 103C or 103E.

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- (3) An appeal under subsection (1) may be brought only with the permission of—
 - (a) the Tribunal, or
 - (b) if the Tribunal refuses permission, the appropriate appellate court.
- (4) On an appeal under subsection (1) the appropriate appellate court may—
 - (a) affirm the Tribunal’s decision;
 - (b) make any decision which the Tribunal could have made;
 - (c) remit the case to the Tribunal;
 - (d) affirm a direction under section 87;
 - (e) vary a direction under section 87;
 - (f) give a direction which the Tribunal could have given under section 87.
- (5) In this section “the appropriate appellate court” means—
 - (a) in relation to an appeal decided in England or Wales, the Court of Appeal,
 - (b) in relation to an appeal decided in Scotland, the Court of Session, and
 - (c) in relation to an appeal decided in Northern Ireland, the Court of Appeal in Northern Ireland.
- (6) An appeal under subsection (1) to the Court of Session shall be to the Inner House.]

Textual Amendments

- F2** S. 103B inserted (4.4.2005) by [Asylum and Immigration \(Treatment of Claimants, etc.\) Act 2004](#) (c. 19), [ss. 26\(6\), 48\(1\)-\(3\)](#) (with transitional provisions in [Sch. 2](#)); [S.I. 2005/565](#), [art. 2](#) (with savings in [arts. 3-9](#))

VALID FROM 04/04/2005

[^{F3}103C Appeal from Tribunal instead of reconsideration **U.K.**

- (1) On an application under section 103A in respect of an appeal the appropriate court, if it thinks the appeal raises a question of law of such importance that it should be decided by the appropriate appellate court, may refer the appeal to that court.
- (2) On a reference under subsection (1) the appropriate appellate court may—
 - (a) affirm the Tribunal’s decision;
 - (b) make any decision which the Tribunal could have made;
 - (c) remit the case to the Tribunal;
 - (d) affirm a direction under section 87;
 - (e) vary a direction under section 87;
 - (f) give a direction which the Tribunal could have given under section 87;
 - (g) restore the application under section 103A to the appropriate court.
- (3) In this section—

“the appropriate court” has the same meaning as in section 103A, and
“the appropriate appellate court” has the same meaning as in section 103B.

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(4) A reference under subsection (1) to the Court of Session shall be to the Inner House.]

Textual Amendments

F3 S. 103C inserted (4.4.2005) by [Asylum and Immigration \(Treatment of Claimants, etc.\) Act 2004 \(c. 19\)](#), [ss. 26\(6\), 48\(1\)-\(3\)](#) (with transitional provisions in [Sch. 2](#)); [S.I. 2005/565](#), [art. 2](#) (with savings in arts. 3-9)

VALID FROM 04/04/2005

[^{F4}103D Reconsideration: legal aid **U.K.**

- (1) On the application of an appellant under section 103A, the appropriate court may order that the appellant's costs in respect of the application under section 103A shall be paid out of the Community Legal Service Fund established under section 5 of the Access to Justice Act 1999 (c. 22).
- (2) Subsection (3) applies where the Tribunal has decided an appeal following reconsideration pursuant to an order made—
 - (a) under section 103A(1), and
 - (b) on the application of the appellant.
- (3) The Tribunal may order that the appellant's costs—
 - (a) in respect of the application for reconsideration, and
 - (b) in respect of the reconsideration,
 shall be paid out of that Fund.
- (4) The Secretary of State may make regulations about the exercise of the powers in subsections (1) and (3).
- (5) Regulations under subsection (4) may, in particular, make provision—
 - (a) specifying or providing for the determination of the amount of payments;
 - (b) about the persons to whom the payments are to be made;
 - (c) restricting the exercise of the power (whether by reference to the prospects of success in respect of the appeal at the time when the application for reconsideration was made, the fact that a reference has been made under section 103C(1), the circumstances of the appellant, the nature of the appellant's legal representatives, or otherwise).
- (6) Regulations under subsection (4) may make provision—
 - (a) conferring a function on the Legal Services Commission;
 - (b) modifying a duty or power of the Legal Services Commission in respect of compliance with orders under subsection (3);
 - (c) applying (with or without modifications), modifying or disapplying a provision of, or of anything done under, an enactment relating to the funding of legal services.
- (7) Before making regulations under subsection (4) the Secretary of State shall consult such persons as he thinks appropriate.

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- (8) This section has effect only in relation to an appeal decided in—
- (a) England,
 - (b) Wales, or
 - (c) Northern Ireland.
- (9) In relation to an appeal decided in Northern Ireland this section shall have effect—
- (a) as if a reference to the Community Legal Service Fund were to the fund established under paragraph 4(2)(a) of Schedule 3 to the Access to Justice (Northern Ireland) Order 2003 (S.I. 2003/ 435 (N.I. 10)), and
 - (b) with any other necessary modifications.]

Textual Amendments

- F4** S. 103D inserted (4.4.2005 for E.W.S and 30.4.2007 for N.I.) by [Asylum and Immigration \(Treatment of Claimants, etc.\) Act 2004 \(c. 19\)](#), **ss. 26(6)**, 48(1)-(3) (with transitional provisions in [Sch. 2](#)); S.I. 2005/565, **art. 2** (with savings in [arts. 3-9](#)); S.I. 2007/845, **art. 2**

VALID FROM 04/04/2005

[^{F5}103E Appeal from Tribunal sitting as panel **U.K.**

- (1) This section applies to a decision of the Tribunal on an appeal under section 82 or 83 where its jurisdiction is exercised by three or more legally qualified members.
- (2) A party to the appeal may bring a further appeal on a point of law to the appropriate appellate court.
- (3) An appeal under subsection (2) may be brought only with the permission of—
 - (a) the Tribunal, or
 - (b) if the Tribunal refuses permission, the appropriate appellate court.
- (4) On an appeal under subsection (2) the appropriate appellate court may—
 - (a) affirm the Tribunal’s decision;
 - (b) make any decision which the Tribunal could have made;
 - (c) remit the case to the Tribunal;
 - (d) affirm a direction under section 87;
 - (e) vary a direction under section 87;
 - (f) give a direction which the Tribunal could have given under section 87.
- (5) In this section “the appropriate appellate court” means—
 - (a) in relation to an appeal decided in England or Wales, the Court of Appeal,
 - (b) in relation to an appeal decided in Scotland, the Court of Session, and
 - (c) in relation to an appeal decided in Northern Ireland, the Court of Appeal in Northern Ireland.
- (6) A further appeal under subsection (2) to the Court of Session shall be to the Inner House.

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- (7) In this section a reference to the Tribunal’s decision on an appeal does not include a reference to—
- (a) a procedural, ancillary or preliminary decision, or
 - (b) a decision following remittal under section 103B or 103C.]

Textual Amendments

F5 S. 103E inserted (4.4.2005) by [Asylum and Immigration \(Treatment of Claimants, etc.\) Act 2004 \(c. 19\), ss. 26\(6\), 48\(1\)-\(3\)](#) (with transitional provisions in [Sch. 2](#)); S.I. 2005/565, [art. 2](#) (with savings in arts. 3-9)

104 Pending appeal **U.K.**

- (1) An appeal under section 82(1) is pending during the period—
 - (a) beginning when it is instituted, and
 - (b) ending when it is finally determined, withdrawn or abandoned (or when it lapses under section 99).
- (2) An appeal under section 82(1) is not finally determined for the purposes of subsection (1)(b) while a further appeal or an application under section 101(2)—
 - (a) has been instituted and is not yet finally determined, withdrawn or abandoned, or
 - (b) may be brought (ignoring the possibility of an appeal out of time with permission).
- (3) The remittal of an appeal to an adjudicator under section 102(1)(c) is not a final determination for the purposes of subsection (2) above.
- (4) An appeal under section 82(1) shall be treated as abandoned if the appellant—
 - (a) is granted leave to enter or remain in the United Kingdom, or
 - (b) leaves the United Kingdom.
- (5) An appeal under section 82(2)(a), (c), (d), (e) or (f) shall be treated as finally determined if a deportation order is made against the appellant.

Modifications etc. (not altering text)

C1 S. 104 applied (with modifications) by [1997 c. 68, s. 2\(2\)\(j\)](#) (as substituted (1.4.2003) by [2002 c. 41, ss. 114, 162\(2\), Sch. 7 para. 20](#) (with s. 159); S.I. 2003/754, [art. 2\(1\), Sch. 1](#)))

105 Notice of immigration decision **U.K.**

- (1) The Secretary of State may make regulations requiring a person to be given written notice where an immigration decision is taken in respect of him.
- (2) The regulations may, in particular, provide that a notice under subsection (1) of a decision against which the person is entitled to appeal under section 82(1) must state—
 - (a) that there is a right of appeal under that section, and
 - (b) how and when that right may be exercised.

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(3) The regulations may make provision (which may include presumptions) about service.

Modifications etc. (not altering text)

C2 S. 105 applied (with modifications) by 1997 c. 68, s. 2(2)(k) (as substituted (1.4.2003) by 2002 c. 41, ss. 114, 162(2), Sch. 7 para. 20 (with s. 159); S.I. 2003/754, art. 2(1), Sch. 1))

106 Rules U.K.

- (1) The Lord Chancellor may make rules—
- (a) regulating the exercise of the right of appeal under section 82, 83 or 101;
 - (b) prescribing procedure to be followed in connection with proceedings under section 82, 83, 101(1) or 103.
- (2) In particular, rules under subsection (1)—
- (a) must entitle an appellant to be legally represented at any hearing of his appeal;
 - (b) may enable or require an appeal to be determined without a hearing;
 - (c) may enable or require an appeal to be dismissed without substantive consideration where practice or procedure has not been complied with;
 - (d) may enable or require an adjudicator or the Immigration Appeal Tribunal to treat an appeal as abandoned in specified circumstances;
 - (e) may enable or require an adjudicator or the Tribunal to determine an appeal in the absence of parties in specified circumstances;
 - (f) may enable or require an adjudicator or the Tribunal to determine an appeal by reference only to written submissions in specified circumstances;
 - (g) may make provision about the adjournment of an appeal by an adjudicator (which may include provision prohibiting an adjudicator from adjourning except in specified circumstances);
 - (h) may make provision about the treatment of adjourned appeals by an adjudicator (which may include provision requiring an adjudicator to determine an appeal within a specified period);
 - (i) may make provision about the use of electronic communication in the course of or in connection with a hearing;
 - (j) may make provision about the remittal of an appeal by the Tribunal to an adjudicator under section 102;
 - (k) may enable an adjudicator to set aside a decision of himself or another adjudicator;
 - (l) may enable the Tribunal to set aside a decision of the Tribunal;
 - (m) must make provision about the consolidation of appeals (which may, in particular, include provision for the adjournment or remission of a further appeal under section 101);
 - (n) may make provision (which may include presumptions) about service;
 - (o) may confer ancillary powers on an adjudicator or the Tribunal;
 - (p) may confer a discretion on an adjudicator or the Tribunal;
 - (q) may require an adjudicator or the Tribunal to give notice of a determination to a specified person;
 - (r) may require or enable notice of a determination to be given on behalf of an adjudicator or the Tribunal;

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- (s) may make provision about the grant of bail by an adjudicator or the Tribunal (which may, in particular, include provision which applies or is similar to any enactment).
- (3) Rules under subsection (1)—
- (a) may enable an adjudicator or the Tribunal to make an award of costs or expenses,
 - (b) may make provision (which may include provision conferring discretion on a court) for the taxation or assessment of costs or expenses,
 - (c) may make provision about interest on an award of costs or expenses (which may include provision conferring a discretion or providing for interest to be calculated in accordance with provision made by the rules),
 - (d) may enable an adjudicator or the Tribunal to disallow all or part of a representative's costs or expenses,
 - (e) may enable an adjudicator or the Tribunal to require a representative to pay specified costs or expenses, and
 - (f) shall make provision in respect of proceedings before an adjudicator or the Tribunal which has an effect similar to that of section 101(3)(d) and the Civil Procedure Rules referred to there.
- (4) A person commits an offence if without reasonable excuse he fails to comply with a requirement imposed in accordance with rules under subsection (1) to attend before an adjudicator or the Tribunal—
- (a) to give evidence, or
 - (b) to produce a document.
- (5) A person who is guilty of an offence under subsection (4) shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Modifications etc. (not altering text)

C3 S. 106 extended by 1981 c. 61, s. 40A(7) (as substituted (1.4.2003) by 2002 c. 41, ss. 4(1), 162(2) (with s. 159); S.I. 2003/754, art. 2(1), Sch. 1))

107 Practice directions **U.K.**

- (1) The President of the Immigration Appeal Tribunal may give directions as to the practice to be followed by the Tribunal.
- (2) The Chief Adjudicator may give directions as to the practice to be followed by adjudicators.

Modifications etc. (not altering text)

C4 S. 107 extended by 1981 c. 61, s. 40A(8) (as substituted (1.4.2003) by 2002 c. 41, ss. 4(1), 162(2) (with s. 159); S.I. 2003/754, art. 2(1), Sch. 1))

108 Forged document: proceedings in private **U.K.**

- (1) This section applies where it is alleged—

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- (a) that a document relied on by a party to an appeal under section 82, 83 or 101 is a forgery, and
 - (b) that disclosure to that party of a matter relating to the detection of the forgery would be contrary to the public interest.
- (2) The adjudicator or the Immigration Appeal Tribunal—
- (a) must investigate the allegation in private, and
 - (b) may proceed in private so far as necessary to prevent disclosure of the matter referred to in subsection (1)(b).

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