

ABANDONED APPEALS

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Introduction

This guidance sets out instructions for officers and team support in asylum and legacy on the processes and procedures to be followed where an appeal against an immigration decision is deemed abandoned by virtue of the Home Office granting a period of leave to enter or remain or the appellant leaving the United Kingdom.

For information and guidance on dealing with the various aspects of asylum appeals see the section of “The Appeals Process”.

Application of this instruction in respect of children and those with children

Section 55 of the Borders, Citizenship and Immigration Act 2009 requires the UK Border Agency to carry out its existing functions in a way that takes into account the need to safeguard and promote the welfare of children in the UK. It does not impose any new functions, or override existing functions.

Officers must not apply the actions set out in this instruction either to children or to those with children without having due regard to Section 55. The UK Border Agency instruction ‘Arrangements to Safeguard and Promote Children’s Welfare in the United Kingdom Border Agency’ sets out the key principles to take into account in all Agency activities.

Our statutory duty to children includes the need to demonstrate:

- Fair treatment which meets the same standard a British child would receive;
- The child's interests being made a primary, although not the only consideration;
- No discrimination of any kind;
- Asylum applications are dealt with in a timely fashion;
- Identification of those that might be at risk from harm.

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Appeal to be treated as Abandoned

The following scenarios would deem the appeal to be abandoned

As a consequence of the appellant leaving the UK

Where an appeal has been lodged and the appellant leaves the United Kingdom prior to the appeal being heard, the appeal is deemed abandoned as stated in s104(4) of the 2002 Act as amended on 30th March 2006 by s9 of the IAN Act 2006. An appeal is also abandoned if the appellant signs a disclaimer and leaves the United Kingdom or fails to attend the hearing and there is evidence that he has left the United Kingdom.

Unless the officer has been notified that any of the above has occurred, it is extremely unlikely that the officer will be aware that the appellant has left the UK. The officer generally may become aware if the appellant attempts to re-enter the UK at port.

If the officer becomes aware that an appeal is abandoned by the fact that the appellant has left the UK, the officer may notify the Tribunal of this fact at once.

By virtue of the appellant being granted leave

If the appeal was submitted and subsequently, the appellant is granted leave to remain (for more than 12 months) by the Home Office, the appeal could potentially be treated as abandoned. Here there may be three possible scenarios:

If the officer is aware that an appeal has been lodged and the Home Office has granted Leave

If the officer is aware that an appeal had been lodged then the Officer must advise the AIT by letter of the decision to grant limited leave (using letter ref: **ASL.3267**). The content of the letter must include:

- the date of decision to grant
- and the notification date of the grant

Once the AIT receives the UK Border Agency notification letter, The AIT will suspend the appeal and wait to see if the appellant submits a 'Notice of intention to pursue appeal' form.

The officer must at the point of granting leave via the 'Your Asylum Decision' information sheet (ACD.2171; ASL.3225 or ASL.3226) advise the appellant that they may request a continuation of their appeal provided:

- It is done within 28 days of receipt of their decision letter (advising them of their grant of leave) and:

Either:

- They are currently in the UK and have not been recognised as a refugee but have been granted leave to enter or remain for a period exceeding 12 months and
- They consider that their removal would be in breach of the United Kingdom's obligation under the Refugee Convention.

Or:

- They are currently in the UK and have been granted leave to remain for a limited period and they want to pursue their appeal on race discrimination grounds.

The appellant would be able to obtain a ‘Notice of intention to pursue appeal’ form from the AIT website. The appellant must complete and submit the form directly to the AIT. The officer will be sent a copy of the ‘Notice of Intention to pursue appeal’ form from the AIT after receipt.

On receipt of a copy of the ‘Notice of Intention to pursue appeal’ form, the officer must:

- Update CID notes with the date of receipt
- Update the Case Management Plan

If the officer has not received a copy of the ‘Notice of intention to pursue appeal’ form before the expiry of the 28 days deadline, then the officer may contact the AIT 48 hours after the 28 day deadline to check whether the notice has been received and whether the appeal will remain ‘live.’

If the officer becomes aware of an appeal being lodged after granting leave.

If the officer has granted leave for more than 12 months, and then receives notification from the AIT that the appellant has lodged an appeal, the officer must notify the AIT of the leave granted. See ‘By virtue of the appellant being granted leave.’

If the officer is not aware of an appeal being lodged.

If the officer serves the decision letter granting leave to enter or remain without being aware of the fact that the appellant has submitted an appeal, then the officer will be unable to advise the AIT of any steps they may need to take. If the officer becomes aware of an appeal lodged after granting leave, then the officer must notify the AIT of the leave granted. See ‘By virtue of the appellant being granted leave.’

If ‘Notice of Intention to Pursue Appeal’ not received or received outside of the 28 days deadline

If the appellant accepts the grant and does not send the ‘Notice of intention to pursue appeal’ form within the 28 days deadline or If the ‘Notice of intention to pursue appeal’ form is not received within 28 days of receipt of the Home Office decision to grant, then in accordance with Rule 18 (1B) of the AIT Rules, the appeal is abandoned.

The officer must be sent a copy of the ‘Acknowledgement of intention to pursue appeal outside of 28 days’ notice from the AIT, advising that the appeal is now classed as being abandoned.

The officer must:

- Put the file in the hold area with a flag for when the leave to remain expires
- Update CID with the date the appellant was notified of being granted leave to remain
- Update CID with the date of expiry of leave to remain
- Update the Case Management Plan

If ‘Notice of Intention to Pursue Appeal’ received

If the ‘Notice of intention to pursue appeal’ form is received within the 28 days, then the AIT (or High Court/Court of Appeal) will advise the appellant and the officer that the appeal will progress as previously notified. The officer must then continue with the appeals process and the AIT will list the appeal hearing in the usual manner.

The officer must update CID notes and the Case Management Plan stating that the Appeal will continue.

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Term	Meaning
ASL. 3267	Letter to AIT advising of leave granted
ASL.3225	Asylum Decision information sheet giving advise and information in relation to a decision made on an asylum claim
ASL.3226	Asylum Decision information sheet giving advise and information in relation to a decision made on a humanitarian protection claim
ACD.2171	Asylum Decision information sheet giving advise and information in relation to an asylum decision made where limited leave has been granted

Document Control

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3.0	RA	29/10/09	Reference to s55 of BCIA 2009 included (Children's Duty)

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