Immigration Bill

Factsheet: Appeals (clauses 11-13)

Immigration Minister Mark Harper:

“The Government want fair, fast and accurate immigration decisions. We recognise the importance of an appeal to an independent tribunal where a case touches on fundamental rights, and will preserve this in this Bill.

“But the immigration appeals system has become a never-ending game of snakes and ladders, with almost 70,000 appeals heard each year. There are 17 current rights of appeal, and when a case finally comes to a close, some applicants put in fresh applications and start all over again. This is not fair to applicants – who face delays and costs – and not fair to the public, who expect swift enforcement of immigration decisions.

“This Bill sorts out this mess. In future, 17 rights of appeal will be reduced to four. And foreign criminals won’t be able to prevent deportation simply by dragging out the appeals process, as many such appeals will be heard only once the criminal is back in their home country. It cannot be right that criminals who should be deported can remain here and build up a further claim to a settled life in the UK.”

Background

The appeals system is complex and costly. A *right* to appeal can be used to delay removal even when there is no arguable error in the decision; where the person is seeking to stay for reasons that have not even been mentioned to the Secretary of State (for example a refused student appealing that refusal and only raising asylum or the fact that he or she has a family in the UK and a claim under Article 8 when he appeals); and an appeal to an immigration judge is a very costly and time-consuming way to correct simple case work errors which could be resolved by a request to the Home Office to review the decision. We need an effective and efficient appeals system which provides an opportunity to challenge a decision made by the Secretary of State which affects fundamental rights but which cannot be abused or manipulated to delay the removal of those who have no basis to remain in the UK or to raise matters which have not been raised with the Secretary of State.

What we are going to do

- Reduce the number of immigration decisions that can be appealed from the current 17 to 4.
- Ensure persons liable to deportation can be deported first and appeal after, unless that would cause serious irreversible harm.

- Make the appeals process more transparent so that decisions on human rights and asylum claims must be considered by the Secretary of State before they are considered by the Tribunal.
- Set up an administrative review system to provide a proportionate and less costly mechanism for resolving case working errors.

How we are going to do it

- The Bill will reform the appeals system so that there will be a right of appeal where an asylum or human rights has been made to and refused by the Secretary of State or where refugee or humanitarian protection status is revoked.
- In the case of a person liable to be deported an appeal on a human rights claim will be heard after the person has been removed from the UK where that does not create a real risk of serious irreversible harm.

Benefits

- Migrants with no entitlement to stay in the UK will be removed more quickly.
- There will be up to 39,500 fewer appeals each year, a reduction of 58% from 2012. A net saving of £219 million over 10 years is anticipated as a consequence.
- Where an immigration application is wrongly refused because of casework error it will be corrected by a less costly and quicker process.

Next steps

- The appeals provisions will be commenced by order.
- The changes will not be retrospective. Where decisions are made before commencement current appeal rights will remain

Q&A

How will the new administrative review arrangements work?

We make millions of immigration decisions every year and inevitably we do make mistakes. For simple case working errors, we will replicate for those in the UK what we do overseas, which is to have a cheap and quick process of administrative review.

There will be a 10 day time limit to apply for review of a refused application. The review will be performed by someone other than the original decision maker. While a review is pending the person in question will not be required to leave the country. If

the migrant has permission to work or study they will normally be able to continue to do so while the review is pending.

The service standard will be to complete administrative reviews within 28 days, substantially quicker than the current average of 12 weeks for an equivalent appeal to be resolved.

What does "serious irreversible harm" mean?

The "serious irreversible harm" test has been used by the European Court of Human Rights to identify when an appeal should suspend removal. For example, where a person makes a credible claim that there is a risk that they will be killed or tortured, to return them while the appeal is heard would amount to a real risk of serious irreversible harm. But, if the claim is that removal would interfere with their private life in the UK then that interference would not amount to a real risk of serious irreversible harm, so they could be removed while their appeal is heard. If a criminal had been in prison for the past 5 years and on the day before his release made an Article 8 claim because he has a British wife, who he has not lived with for 5 years then they can communicate via modern media, and she may even be able to visit him overseas, so his removal while the appeal is heard would not result in a real risk of serious irreversible harm.

Further Reading:

- Appeals Impact Assessment: https://www.gov.uk/government/organisations/home-office/series/immigration-bill

Home Office
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