



# Immigration, Asylum and Nationality Act 2006

## 2006 CHAPTER 13

### *Appeals*

#### **1 Variation of leave to enter or remain**

After section 83 of the Nationality, Immigration and Asylum Act 2002 (c. 41) (right of appeal: asylum claim) insert—

##### **“83A Appeal: variation of limited leave**

- (1) This section applies where—
- (a) a person has made an asylum claim,
  - (b) he was granted limited leave to enter or remain in the United Kingdom as a refugee within the meaning of the Refugee Convention,
  - (c) a decision is made that he is not a refugee, and
  - (d) following the decision specified in paragraph (c) he has limited leave to enter or remain in the United Kingdom otherwise than as a refugee.
- (2) The person may appeal to the Tribunal against the decision to curtail or to refuse to extend his limited leave.”

#### **2 Removal**

In section 82(2)(g) of the Nationality, Immigration and Asylum Act 2002 (c. 41) (right of appeal: removal) for “section 10(1)(a), (b) or (c)” substitute “section 10(1)(a), (b), (ba) or (c)”.

#### **3 Grounds of appeal**

After section 84(3) of the Nationality, Immigration and Asylum Act 2002 (c. 41) (grounds of appeal) add—

“(4) An appeal under section 83A 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.”

#### 4 Entry clearance

- (1) For sections 88A, 90 and 91 of the Nationality, Immigration and Asylum Act 2002 (restricted right of appeal in relation to refusal of entry clearance for visitor or student) substitute—

##### “88A Entry clearance

- (1) A person may not appeal under section 82(1) against refusal of an application for entry clearance unless the application was made for the purpose of—
- (a) visiting a person of a class or description prescribed by regulations for the purpose of this subsection, or
  - (b) entering as the dependant of a person in circumstances prescribed by regulations for the purpose of this subsection.
- (2) Regulations under subsection (1) may, in particular—
- (a) make provision by reference to whether the applicant is a member of the family (within such meaning as the regulations may assign) of the person he seeks to visit;
  - (b) provide for the determination of whether one person is dependent on another;
  - (c) make provision by reference to the circumstances of the applicant, of the person whom the applicant seeks to visit or on whom he depends, or of both (and the regulations may, in particular, include provision by reference to—
    - (i) whether or not a person is lawfully settled in the United Kingdom within such meaning as the regulations may assign;
    - (ii) the duration of two individuals' residence together);
  - (d) make provision by reference to an applicant’s purpose in entering as a dependant;
  - (e) make provision by reference to immigration rules;
  - (f) confer a discretion.
- (3) Subsection (1)—
- (a) does not prevent the bringing of an appeal on either or both of the grounds referred to in section 84(1)(b) and (c), and
  - (b) is without prejudice to the effect of section 88 in relation to an appeal under section 82(1) against refusal of entry clearance.”
- (2) For section 23(1) of the Immigration and Asylum Act 1999 (c. 33) (monitoring refusals of entry clearance) substitute—
- “(1) The Secretary of State must appoint a person to monitor, in such manner as the Secretary of State may determine, refusals of entry clearance in cases where, as a result of section 88A of the Nationality, Immigration and Asylum Act 2002 (c. 41) (entry clearance: non-family visitors and students), an appeal under section 82(1) of that Act may be brought only on the grounds referred

to in section 84(1)(b) and (c) of that Act (racial discrimination and human rights).”

- (3) Within the period of three years beginning with the commencement (for any purpose) of subsection (1), the Secretary of State shall lay before Parliament a report about the effect of that subsection; and the report—
- (a) must specify the number of applications for entry clearance made during that period,
  - (b) must specify the number of those applications refused,
  - (c) must specify the number of those applications granted, after an initial indication to the applicant of intention to refuse the application, as a result of further consideration in accordance with arrangements established by the Secretary of State,
  - (d) must describe those arrangements,
  - (e) must describe the effect of regulations made under section 88A(1)(a) or (b) as substituted by subsection (1) above,
  - (f) may include other information about the process and criteria used to determine applications for entry clearance, and
  - (g) may record opinions.

## **5 Failure to provide documents**

After section 88(2)(b) of the Nationality, Immigration and Asylum Act 2002 (c. 41) (appeal: ineligibility) insert—

“(ba) has failed to supply a medical report or a medical certificate in accordance with a requirement of immigration rules.”

## **6 Refusal of leave to enter**

For section 89 of the Nationality, Immigration and Asylum Act 2002 (appeal against refusal of leave to enter: visitor or student without entry clearance) substitute—

### **“89 Refusal of leave to enter**

- (1) A person may not appeal under section 82(1) against refusal of leave to enter the United Kingdom unless—
- (a) on his arrival in the United Kingdom he had entry clearance, and
  - (b) the purpose of entry specified in the entry clearance is the same as that specified in his application for leave to enter.
- (2) Subsection (1) does not prevent the bringing of an appeal on any or all of the grounds referred to in section 84(1)(b), (c) and (g).”

## **7 Deportation**

- (1) After section 97 of the Nationality, Immigration and Asylum Act 2002 (c. 41) (appeals: national security) insert—

**“97A National security: deportation**

- (1) This section applies where the Secretary of State certifies that the decision to make a deportation order in respect of a person was taken on the grounds that his removal from the United Kingdom would be in the interests of national security.
- (2) Where this section applies—
- (a) section 79 shall not apply,
  - (b) the Secretary of State shall be taken to have certified the decision to make the deportation order under section 97, and
  - (c) for the purposes of section 2(5) of the Special Immigration Appeals Commission Act 1997 (c. 68) (appeals from within United Kingdom) it shall be assumed that section 92 of this Act—
    - (i) would not apply to an appeal against the decision to make the deportation order by virtue of section 92(2) to (3D),
    - (ii) would not apply to an appeal against that decision by virtue of section 92(4)(a) in respect of an asylum claim, and
    - (iii) would be capable of applying to an appeal against that decision by virtue of section 92(4)(a) in respect of a human rights claim unless the Secretary of State certifies that the removal of the person from the United Kingdom would not breach the United Kingdom’s obligations under the Human Rights Convention.
- (3) A person in respect of whom a certificate is issued under subsection (2)(c) (iii) may appeal to the Special Immigration Appeals Commission against the issue of the certificate; and for that purpose the Special Immigration Appeals Commission Act 1997 shall apply as to an appeal against an immigration decision to which section 92 of this Act applies.
- (4) The Secretary of State may repeal this section by order.”
- (2) In section 112 of that Act (regulations, &c.) after subsection (5A) insert—
- “(5B) An order under section 97A(4)—
- (a) must be made by statutory instrument,
  - (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament, and
  - (c) may include transitional provision.”

**8 Legal aid**

- (1) Section 103D of the Nationality, Immigration and Asylum Act 2002 (c. 41) (reconsideration: legal aid) shall be amended as follows.
- (2) In subsection (2) for the words “where the Tribunal has decided an appeal following reconsideration pursuant to an order made” substitute “where an order for reconsideration is made”.
- (3) For subsection (3) substitute—
- “(3) The Tribunal may order payment out of that Fund of the appellant’s costs—

- (a) in respect of the application for reconsideration;
- (b) in respect of preparation for reconsideration;
- (c) in respect of the reconsideration.”

## 9 Abandonment of appeal

For section 104(4) of the Nationality, Immigration and Asylum Act 2002 (c. 41) (pending appeal: deemed abandonment) substitute—

“(4) An appeal under section 82(1) brought by a person while he is in the United Kingdom shall be treated as abandoned if the appellant leaves the United Kingdom.

(4A) An appeal under section 82(1) brought by a person while he is in the United Kingdom shall be treated as abandoned if the appellant is granted leave to enter or remain in the United Kingdom (subject to subsections (4B) and (4C)).

(4B) Subsection (4A) shall not apply to an appeal in so far as it is brought on the ground relating to the Refugee Convention specified in section 84(1)(g) where the appellant—

- (a) is granted leave to enter or remain in the United Kingdom for a period exceeding 12 months, and
- (b) gives notice, in accordance with any relevant procedural rules (which may include provision about timing), that he wishes to pursue the appeal in so far as it is brought on that ground.

(4C) Subsection (4A) shall not apply to an appeal in so far as it is brought on the ground specified in section 84(1)(b) where the appellant gives notice, in accordance with any relevant procedural rules (which may include provision about timing), that he wishes to pursue the appeal in so far as it is brought on that ground.”

## 10 Grants

Section 110 (grants to advisory organisations) of the Nationality, Immigration and Asylum Act 2002 shall cease to have effect.

## 11 Continuation of leave

(1) Section 3C of the Immigration Act 1971 (c. 77) (continuation of leave to enter or remain pending variation decision) shall be amended as follows.

(2) In subsection (2)(b) (continuation pending possible appeal) after “could be brought” insert “, while the appellant is in the United Kingdom”.

(3) In subsection (2)(c) (continuation pending actual appeal) after “against that decision” insert “, brought while the appellant is in the United Kingdom,”.

(4) For subsection (6) (decision) substitute—

“(6) The Secretary of State may make regulations determining when an application is decided for the purposes of this section; and the regulations—

- (a) may make provision by reference to receipt of a notice,

- (b) may provide for a notice to be treated as having been received in specified circumstances,
- (c) may make different provision for different purposes or circumstances,
- (d) shall be made by statutory instrument, and
- (e) shall be subject to annulment in pursuance of a resolution of either House of Parliament.”

(5) After section 3C insert—

**“3D Continuation of leave following revocation**

- (1) This section applies if a person’s leave to enter or remain in the United Kingdom—
    - (a) is varied with the result that he has no leave to enter or remain in the United Kingdom, or
    - (b) is revoked.
  - (2) The person’s leave is extended by virtue of this section during any period when—
    - (a) an appeal under section 82(1) of the Nationality, Immigration and Asylum Act 2002 could be brought, while the person is in the United Kingdom, against the variation or revocation (ignoring any possibility of an appeal out of time with permission), or
    - (b) an appeal under that section against the variation or revocation, brought while the appellant is in the United Kingdom, is pending (within the meaning of section 104 of that Act).
  - (3) A person’s leave as extended by virtue of this section shall lapse if he leaves the United Kingdom.
  - (4) A person may not make an application for variation of his leave to enter or remain in the United Kingdom while that leave is extended by virtue of this section.”
- (6) Section 82(3) of the Nationality, Immigration and Asylum Act 2002 (c. 41) (variation and revocation: extension of leave pending appeal) shall cease to have effect.

**12 Asylum and human rights claims: definition**

- (1) Section 113(1) of the Nationality, Immigration and Asylum Act 2002 (c. 41) (appeals: interpretation) shall be amended as follows.
- (2) For the definition of “asylum claim” substitute—
  - ““asylum claim”—
  - (a) means a claim made by a person that to remove him from or require him to leave the United Kingdom would breach the United Kingdom’s obligations under the Refugee Convention, but
  - (b) does not include a claim which, having regard to a former claim, falls to be disregarded for the purposes of this Part in accordance with immigration rules,”.
- (3) For the definition of “human rights claim” substitute—

““human rights claim”—

- (a) means a claim made by a person that to remove him from or require him to leave the United Kingdom would be unlawful under section 6 of the Human Rights Act 1998 (c. 42) (public authority not to act contrary to Convention) as being incompatible with his Convention rights, but
- (b) does not include a claim which, having regard to a former claim, falls to be disregarded for the purposes of this Part in accordance with immigration rules,”.

### **13 Appeal from within United Kingdom: certification of unfounded claim**

After section 94(6A) of the Nationality, Immigration and Asylum Act 2002 (c. 41) (appeal from within United Kingdom: unfounded human rights or asylum claim) insert—

“(6B) A certificate under subsection (1A) or (2) may not be issued (and subsection (3) shall not apply) in relation to an appeal under section 82(2)(d) or (e) against a decision relating to leave to enter or remain in the United Kingdom, where the leave was given in circumstances specified for the purposes of this subsection by order of the Secretary of State.”

### **14 Consequential amendments**

Schedule 1 (which makes amendments consequential on the preceding provisions of this Act) shall have effect.