



Asylum and Immigration Act 1996

1996 CHAPTER 49

Asylum claims

1 Extension of special appeals procedures

For paragraph 5 of Schedule 2 to the Asylum and Immigration Appeals Act 1993 (“the 1993 Act”) there shall be substituted the following paragraph—

- “5 (1) This paragraph applies to an appeal by a person on any of the grounds mentioned in subsections (1) to (4) of section 8 of this Act if the Secretary of State has certified that, in his opinion, the person’s claim on the ground that it would be contrary to the United Kingdom’s obligations under the Convention for him to be removed from, or be required to leave, the United Kingdom is one to which—
- (a) sub-paragraph (2), (3) or (4) below applies; and
 - (b) sub-paragraph (5) below does not apply.
- (2) This sub-paragraph applies to a claim if the country or territory to which the appellant is to be sent is designated in an order made by the Secretary of State by statutory instrument as a country or territory in which it appears to him that there is in general no serious risk of persecution.
- (3) This sub-paragraph applies to a claim if, on his arrival in the United Kingdom, the appellant was required by an immigration officer to produce a valid passport and either—
- (a) he failed to produce a passport without giving a reasonable explanation for his failure to do so; or
 - (b) he produced a passport which was not in fact valid and failed to inform the officer of that fact.
- (4) This sub-paragraph applies to a claim if—
- (a) it does not show a fear of persecution by reason of the appellant’s race, religion, nationality, membership of a particular social group, or political opinion;

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- (b) it shows a fear of such persecution, but the fear is manifestly unfounded or the circumstances which gave rise to the fear no longer subsist;
 - (c) it is made at any time after the appellant—
 - (i) has been refused leave to enter under the 1971 Act,
 - (ii) has been recommended for deportation by a court empowered by that Act to do so,
 - (iii) has been notified of the Secretary of State’s decision to make a deportation order against him by virtue of section 3(5) of that Act, or
 - (iv) has been notified of his liability to removal under paragraph 9 of Schedule 2 to that Act;
 - (d) it is manifestly fraudulent, or any of the evidence adduced in its support is manifestly false; or
 - (e) it is frivolous or vexatious.
- (5) This sub-paragraph applies to a claim if the evidence adduced in its support establishes a reasonable likelihood that the appellant has been tortured in the country or territory to which he is to be sent.
- (6) Rules of procedure under section 22 of the 1971 Act may make special provision in relation to appeals to which this paragraph applies.
- (7) If on an appeal to which this paragraph applies the special adjudicator agrees that the claim is one to which—
- (a) sub-paragraph (2), (3) or (4) above applies; and
 - (b) sub-paragraph (5) above does not apply,
- section 20(1) of that Act shall not confer on the appellant any right to appeal to the Immigration Appeal Tribunal.
- (8) The first order under this paragraph shall not be made unless a draft of the order has been laid before and approved by a resolution of each House of Parliament.
- (9) A statutory instrument containing a subsequent order under this paragraph shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (10) In this paragraph—
- “immigration officer” means an immigration officer appointed for the purposes of the 1971 Act;
 - “passport”, in relation to an appellant, means a passport with photograph or some other document satisfactorily establishing his identity and nationality or citizenship.”

2 Removal etc. of asylum claimants to safe third countries

- (1) Nothing in section 6 of the 1993 Act (protection of claimants from deportation etc.) shall prevent a person who has made a claim for asylum being removed from the United Kingdom if—
- (a) the Secretary of State has certified that, in his opinion, the conditions mentioned in subsection (2) below are fulfilled;

- (b) the certificate has not been set aside on an appeal under section 3 below; and
 - (c) except in the case of a person who is to be sent to a country or territory to which subsection (3) below applies, the time for giving notice of such an appeal has expired and no such appeal is pending.
- (2) The conditions are—
- (a) that the person is not a national or citizen of the country or territory to which he is to be sent;
 - (b) that his life and liberty would not be threatened in that country or territory by reason of his race, religion, nationality, membership of a particular social group, or political opinion; and
 - (c) that the government of that country or territory would not send him to another country or territory otherwise than in accordance with the Convention.
- (3) This subsection applies to any country or territory which is or forms part of a member State, or is designated for the purposes of this subsection in an order made by the Secretary of State by statutory instrument.
- (4) The first order under this section shall not be made unless a draft of the order has been laid before and approved by a resolution of each House of Parliament.
- (5) A statutory instrument containing a subsequent order under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) For the purposes of this section, an appeal under section 3 below is pending during the period beginning when notice of appeal is duly given and ending when the appeal is finally determined or withdrawn.
- (7) In this section “claim for asylum” and “the Convention” have the same meanings as in the 1993 Act.

3 Appeals against certificates under section 2

- (1) Where a certificate has been issued under section 2(1) above in respect of any person—
- (a) that person may appeal against the certificate to a special adjudicator on the ground that any of the conditions mentioned in section 2(2) above was not fulfilled when the certificate was issued, or has since ceased to be fulfilled; but
 - (b) unless and until the certificate is set aside on such an appeal, he shall not be entitled to bring or pursue any appeal under—
 - (i) Part II of the 1971 Act (appeals: general); or
 - (ii) section 8 of the 1993 Act (appeals to special adjudicator on Convention grounds),as respects matters arising before his removal from the United Kingdom.
- (2) A person who has been, or is to be, sent to a country or territory to which section 2(3) above applies shall not be entitled to bring or pursue an appeal under this section so long as he is in the United Kingdom.
- (3) The Lord Chancellor shall designate such number of the adjudicators appointed for the purposes of Part II of the 1971 Act as he thinks necessary to act as special adjudicators for the purposes of this section and may from time to time vary that number and the persons who are so designated.
- (4) Subject to subsection (5) below, the following provisions of the 1971 Act, namely—

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- (a) section 18 (notice of decisions appealable under that Part and statement of appeal rights etc.);
 - (b) section 19 (determination of appeals under that Part by adjudicators);
 - (c) section 21 (references of cases by Secretary of State for further consideration);
 - (d) section 22(1) to (4), (6) and (7) (rules of procedure for appeals);
 - (e) section 23 (grants to voluntary organisations helping persons with rights of appeal); and
 - (f) Schedule 5 (provisions about adjudicators and Immigration Appeal Tribunal),
- shall have effect as if this section were contained in Part II of that Act.
- (5) Rules of procedure under section 22 of the 1971 Act—
- (a) may make special provision in relation to appeals under this section; and
 - (b) may make different provision in relation to appeals by persons who have been, or are to be, sent to countries or territories of different descriptions;
- and so much of paragraph 5 of Schedule 5 to that Act as relates to the allocation of duties among the adjudicators shall have effect subject to subsection (3) above.
- (6) Paragraph 29 of Schedule 2 to the 1971 Act (grant of bail pending appeal) shall have effect as if the references to appeals under sections 13(1), 15(1)(a) and 16 of that Act included references to appeals under this section.