



Nationality, Immigration and Asylum Act 2002

2002 CHAPTER 41

PART 5

IMMIGRATION AND ASYLUM APPEALS

Exceptions and limitations

94 Appeal from within United Kingdom: unfounded human rights or asylum claim

(1) This section applies to an appeal under section 82(1) where the appellant has made an asylum claim or a human rights claim (or both).

[^{F1}(1A) A person may not bring an appeal against an immigration decision of a kind specified in section 82(2)(c), (d) or (e) in reliance on section 92(2) if the Secretary of State certifies that the claim or claims mentioned in subsection (1) above is or are clearly unfounded.]

(2) A person may not bring an appeal to which this section applies [^{F2}in reliance on section 92(4)(a)] if the Secretary of State certifies that the claim or claims mentioned in subsection (1) is or are clearly unfounded.

(3) If the Secretary of State is satisfied that an asylum claimant or human rights claimant is entitled to reside in a State listed in subsection (4) he shall certify the claim under subsection (2) unless satisfied that it is not clearly unfounded.

(4) Those States are—

- (a) ^{F3}
- (b) ^{F3}
- (c) ^{F3}
- (d) ^{F3}
- (e) ^{F3}

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- (f) ^{F3}
 - (g) ^{F3}
 - (h) ^{F3}
 - (i) ^{F3}
 - (j) ^{F3}
 - [^{F4}(k) the Republic of Albania,
 - (l) ^{F5}
 - (m) ^{F6}
 - (n) Jamaica,
 - (o) Macedonia,
 - (p) the Republic of Moldova, and
 - (q) ^{F5}]
 - [^{F7}(r) ^{F8}
 - (s) Bolivia,
 - (t) Brazil,
 - (u) Ecuador,
 - (v) ^{F9}
 - (w) South Africa, and
 - (x) Ukraine.]
 - [^{F10}(y) India.]
 - [^{F11}(z) Mongolia,
 - (aa) Ghana (in respect of men),
 - (bb) Nigeria (in respect of men).]
 - [^{F12}(cc) Bosnia-Herzegovina,
 - (dd) Gambia (in respect of men),
 - (ee) Kenya (in respect of men),
 - (ff) Liberia (in respect of men),
 - (gg) Malawi (in respect of men),
 - (hh) Mali (in respect of men),
 - (ii) Mauritius,
 - (jj) Montenegro,
 - (kk) Peru,
 - (ll) Serbia,
 - (mm) Sierra Leone (in respect of men).]
- (5) The Secretary of State may by order add a State, or part of a State, to the list in subsection (4) if satisfied that—
- (a) there is in general in that State or part no serious risk of persecution of persons entitled to reside in that State or part, and
 - (b) removal to that State or part of persons entitled to reside there will not in general contravene the United Kingdom’s obligations under the Human Rights Convention.
- [^{F13}(5A) If the Secretary of State is satisfied that the statements in subsection (5) (a) and (b) are true of a State or part of a State in relation to a description of person, an order under subsection (5) may add the State or part to the list in subsection (4) in respect of that description of person.

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(5B) Where a State or part of a State is added to the list in subsection (4) in respect of a description of person, subsection (3) shall have effect in relation to a claimant only if the Secretary of State is satisfied that he is within that description (as well as being satisfied that he is entitled to reside in the State or part).

(5C) A description for the purposes of subsection (5A) may refer to—

- (a) gender,
- (b) language,
- (c) race,
- (d) religion,
- (e) nationality,
- (f) membership of a social or other group,
- (g) political opinion, or
- (h) any other attribute or circumstance that the Secretary of State thinks appropriate.

[In deciding whether the statements in subsection (5) (a) and (b) are true of a State or^{F14}(5D) part of a State, the Secretary of State –

- (a) shall have regard to all the circumstances of the State or part (including its laws and how they are applied), and
- (b) shall have regard to information from any appropriate source (including other member States and international organisations).]

[^{F15}(6) The Secretary of State may by order amend the list in subsection (4) so as to omit a State or part added under subsection (5); and the omission may be—

- (a) general, or
- (b) effected so that the State or part remains listed in respect of a description of person.]

[^{F16}(6A) Subsection (3) shall not apply in relation to an asylum claimant or human rights claimant who—

- (a) is the subject of a certificate under section 2 or 70 of the Extradition Act 2003 (c. 41),
- (b) is in custody pursuant to arrest under section 5 of that Act,
- (c) is the subject of a provisional warrant under section 73 of that Act,
- (d) is the subject of an authority to proceed under section 7 of the Extradition Act 1989 (c. 33) or an order under paragraph 4(2) of Schedule 1 to that Act, or
- (e) is the subject of a provisional warrant under section 8 of that Act or of a warrant under paragraph 5(1)(b) of Schedule 1 to that Act.]

(7) A person may not bring an appeal to which this section applies in reliance on section 92(4) if the Secretary of State certifies that—

- (a) it is proposed to remove the person to a country of which he is not a national or citizen, and
- (b) there is no reason to believe that the person's rights under the Human Rights Convention will be breached in that country.

(8) In determining whether a person in relation to whom a certificate has been issued under subsection (7) may be removed from the United Kingdom, the country specified in the certificate is to be regarded as—

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- (a) a place where a person's life and liberty is not threatened by reason of his race, religion, nationality, membership of a particular social group, or political opinion, and
 - (b) a place from which a person will not be sent to another country otherwise than in accordance with the Refugee Convention.
- (9) Where a person in relation to whom a certificate is issued under this section subsequently brings an appeal under section 82(1) while outside the United Kingdom, the appeal shall be considered as if he had not been removed from the United Kingdom.

Textual Amendments

- F1** S. 94(1A) inserted (1.10.2004) by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), **ss. 27(2)**, 48(1)-(3); S.I. 2004/2523, **art. 2**, Sch.
- F2** Words in s. 94(2) substituted (1.10.2004) by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), **ss. 27(3)**, 48(1)-(3); S.I. 2004/2523, **art. 2**, Sch.
- F3** S. 94(4)(a)-(j) repealed (1.10.2004) by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), **ss. 27(4)**, 47, 48(1)-(3), **Sch. 4**; S.I. 2004/2523, **art. 2**, Sch.
- F4** S. 94(4)(k)-(q) added (1.4.2003) by The Asylum (Designated States) Order 2003 (S.I. 2003/970), **art. 3**
- F5** S. 94(4)(l)(q) omitted (1.1.2007) by virtue of The Asylum (Designated States) (Amendment) Order 2006 (S.I. 2006/3215), **art. 2**
- F6** S. 94(4)(m) omitted (27.7.2007) by virtue of The Asylum (Designated States) Order 2007 (S.I. 2007/2221), **art. 3** (with **art. 1**)
- F7** S. 94(4)(r)-(x) added (23.7.2003) by The Asylum (Designated States) (No. 2) Order 2003 (S.I. 2003/1919), **art. 2**
- F8** S. 94(4)(r) omitted (22.4.2005) by virtue of The Asylum (Designated States) (Amendment) Order 2005 (S.I. 2005/1016), **art. 2**
- F9** S. 94(4)(v) omitted (13.12.2006) by virtue of The Asylum (Designated States) (Amendment) (No. 2) Order 2006 (S.I. 2006/3275), **art. 2**
- F10** S. 94(4)(y) added (15.2.2005) by The Asylum (Designated States) Order 2005 (S.I. 2005/330), **art. 2** (with **art. 1**)
- F11** S. 94(4)(z)-(bb) added (2.12.2005) by The Asylum (Designated States) (No. 2) Order 2005 (S.I. 2005/3306), **art. 2**
- F12** S. 94(4)(cc)-(mm) added (27.7.2007) by The Asylum (Designated States) Order 2007 (S.I. 2007/2221), **art. 2** (with **art. 1**)
- F13** S. 94(5A)-(5C) inserted (1.10.2004) by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), **ss. 27(5)**, 48(1)-(3); S.I. 2004/2523, **art. 2**, Sch.
- F14** S. 94(5D) inserted (1.12.2007) by The Asylum (Procedures) Regulations 2007 (S.I. 2007/3187), **reg. 3**
- F15** S. 94(6) substituted (1.10.2004) by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), **ss. 27(6)**, 48(1)-(3); S.I. 2004/2523, **art. 2**, Sch.
- F16** S. 94(6A) inserted (1.10.2004) by Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), **ss. 27(7)**, 48(1)-(3); S.I. 2004/2523, **art. 2**, Sch.

Modifications etc. (not altering text)

- C1** Ss. 82-99 restricted (14.3.2003) by The Nationality, Immigration and Asylum Act 2002 (Commencement No. 4) Order 2003 (S.I. 2003/754), **arts. 3, 4** (with transitional provisions in **arts. 3, 4**, Sch. 2 (as amended by S.I. 2003/1040, S.I. 2003/1339 and S.I. 2003/2993))

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Commencement Information

- II** S. 94 wholly in force at 1.4.2003; s. 94 not in force at Royal Assent see s. 162(2); s. 94(5) in force for certain purposes at 10.2.2003 by S.I. 2003/249, **art. 2, Sch.**; s. 94 in force at 1.4.2003 insofar as not already in force by virtue of S.I. 2003/754, **art. 2, Sch. 1**

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