

**ASYLUM POLICY INSTRUCTION
RIGHTS OF APPEAL IN ASYLUM CASES**

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ASYLUM POLICY INSTRUCTION**RIGHTS OF APPEAL IN ASYLUM CASES****1. Introduction**

This API provides guidance on when a right of appeal arises where we decide to refuse an application for asylum or when we decide that someone is to no longer benefit from recognition as a refugee.

If someone is the subject of an immigration decision they have a right of appeal to the Asylum and Immigration Tribunal (AIT). Section 82(2) of the Nationality, Immigration and Asylum Act 2002 lists those decisions which are defined as 'immigration decisions'. There is no automatic right of appeal against a decision to refuse an asylum claim. Instead appeal rights relate to the relevant immigration decision which may accompany the decision to refuse asylum. For instructions on when a right of appeal arises in relation to an immigration decision, please see **chapter 12** of the *Immigration Directorate's Instructions*.

In addition to appeal rights which arise as a result of an immigration decision, it is also possible to appeal to the AIT where a right of appeal arises under sections 83 or 83A of the 2002 Act or under the provisions of the Immigration (European Economic Area) Regulations 2006 ('the EEA Regulations').

2. Section 83 – Rights of Appeal where asylum is refused but leave is granted (or has been granted)

Under this section, a person who has been refused asylum but granted leave to enter or remain can appeal against the asylum refusal, but only if the leave granted is for more than (or when combined with leave granted earlier adds up to more than) a year.

Note that "leave" for the purposes of section 83 means any kind of leave that has been granted. For instance, a person granted leave to enter for 12 months as a student and then given an extension for 12 months as a foreign spouse would qualify at the time of the second grant, if they had been refused asylum. Indefinite leave to remain is also included for the purpose of section 83 (unlike section 69(3) of the 1999 Act).

2.1 When does the right of appeal arise?

An appeal under section 83 arises in two main cases:

1. When a decision to grant leave to someone who has been (or is being) refused asylum will take the total period of leave granted to over a year, and

2. When a decision is made to refuse asylum to a person who has already been granted leave for over a year.

2.2 **Case 1: leave granted when asylum is or has been refused**

A person who is granted leave for 12 months exactly will not be able to appeal unless a further period of leave triggers the right of appeal by taking the total **over** 12 months. In the same way, a person who is refused asylum and granted leave to enter for 6 months initially will not have a right of appeal on asylum grounds. If and when that person is granted another 6 months, there will still be no asylum right of appeal. It is only if a third period of leave is granted, taking the total **over** 12 months, that the person will be able to make an asylum appeal.

Note that the right of appeal arises when the total period of leave **granted** exceeds 12 months. So a person refused asylum but granted leave for a period in excess of a year could appeal immediately; it would not matter that the applicant had not completed 12 months' leave. If a person were granted leave for two periods of 9 months, the right of appeal would be triggered with the decision to grant the second 9 months.

2.3 **Case 2: leave granted before the asylum decision was taken**

The right of appeal arises where an asylum claim "has been" refused but leave "has been" granted. This means that previous leave should be taken into account when calculating whether or not the new grant of leave attracts the right of appeal. It may even be that there is no new grant of leave. This will be the case where a person who has been refused asylum and granted leave to enter or remain has, say, 3 years of leave left but makes a fresh application for asylum. If we agree that the application is genuinely new (following a military coup in the applicant's home country, for instance), we must make a fresh decision. Because leave "has been" granted for a period exceeding one year, a refusal will be appealable immediately under section 83.

2.4 **Hybrid cases**

A combination of cases 1 and 2, where leave has already been granted for a short period but now asylum is being refused and further leave granted. The period of leave granted before the asylum decision was made must be taken into account when calculating the total period of leave granted for the purposes of section 83.

2.5 **What happens if the leave was granted on a previous visit to the UK?**

The person concerned must have a continuous period of leave of more than a year. A broken period of leave does not count towards the aggregate. Note that an extension of leave under section 3C of the 1971 Act does not break the aggregate period of leave, even though it does not count towards the total.

2.6 Sections 3C and 3D of the 1971 Act (as amended)

An extension of leave under sections 3C and 3D (see the IDI on section 3C – chapter 1, section 5) does not count towards the 12 month period. Such leave is not 'granted', but automatically extends leave previously granted. Any s3C/3D leave should therefore be ignored when calculating the period granted for section 83 purposes. Section 83 requires periods of granted leave, not periods of lawful residence. Where two periods of leave would have been continuous, but for an extension of leave under section 3C/3D in between them, the two periods should be treated as a continuous aggregate period even though the 3C/3D leave does not count towards the total.

2.7 One appeal

Section 83 provides for only one appeal against any one asylum refusal. A fresh decision to grant leave does not create a new right of appeal unless that decision is accompanied by a new asylum refusal. A fresh asylum application (see the API on fresh applications and further representations) will lead to a fresh asylum decision if it meets the fresh claim threshold. If that decision is a refusal, there will be a fresh right of appeal. Assuming that the applicant has already been granted leave for a year or more, the right of appeal will be immediate. Otherwise, the right of appeal will be triggered if and when a decision to grant leave takes the total period granted to over 12 months.

2.8 Asylum only

The right of appeal under section 83 is on asylum grounds only. It is not possible to bring an appeal under this section on any basis other than that the applicant's (hypothetical) removal from the UK would breach this country's obligations under the 1951 Refugee Convention (section 84(3)). This is because refugee status carries benefits (such as a refugee travel document) which other immigration status does not carry.

Section 83 differs from section 69(3) of the 1999 Act in that the Immigration Judge must consider whether the appellant is a refugee at the date of hearing, not whether that person is likely to be a refugee if and when we decide to remove.

3. Section 83A - Rights of appeal where a person ceases to be recognised as a refugee but limited leave continues on another basis

Where a decision is made that someone is to no longer benefit from recognition as a refugee, such a decision is normally accompanied by an immigration decision which would attract a right of appeal under section 82(2). However, in some circumstances it may be appropriate to give someone who was formerly recognised as a refugee, leave on another basis.

Where a decision is made that a person is no longer a refugee but they have continuing limited leave otherwise than as a refugee, section 83A provides them with a right of appeal against the decision refuse to recognise them as a refugee.

Note that "limited leave" for the purposes of section 83A means any kind of limited leave that has been granted. This includes limited discretionary leave granted outside the rules. It also includes all limited leave granted within the rules, for instance, a person granted leave to enter for 12 months as a student.

3.1 **When does the right of appeal arise?**

A section 83A appeal right arises where refugee status is revoked on the basis of one of the "review triggers" as laid out in the API on Refugee Leave AND where there is continuing limited leave despite this revocation.

3.2 **Asylum only**

The right of appeal under section 83A is on asylum grounds only. It is not possible to bring an appeal under this section on any basis other than that the applicant's (hypothetical) removal from the UK would breach this country's obligations under the 1951 Refugee Convention (section 84(3)). This is because refugee status carries benefits (such as a refugee travel document) which other immigration status does not carry.

Enquiries: Further enquiries should normally be made in writing via a Senior Caseworker to AJRU (Appeals and Judicial Review Unit).