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8. Appeal rights for illegal entrants/seamen

Part 5 of the Nationality, Immigration & asylum Act 2002 was implemented on 1 April 2003. It simplified the appeals system by including almost all appeal rights into one section – section 82, and grounds of appeal into another – section 84.

Appeal triggers are now ‘immigration decisions’. The making, giving or serving of removal directions is not considered to be an ‘immigration decision’. A new notice of decision to remove must be given following service of the IS151A. Specific removal directions may then be set. This removes the contention that removal directions trigger a human rights appeal.

The position is the same for seaman deserters, except that they are served with form IS85B.

8.1. Withdrawn appeals

If a person withdraws his appeal, ask him to sign the appropriate form (IS101), which should be witnessed, preferably by his representative or an independent person. (A person may withdraw his appeal by letter, but this must be set out in unambiguous terms). Send the withdrawal form to APC to forward to the AIT to be presented to the immigration judge to determine that the appeal is properly withdrawn. However, if the person wishes to be removed before the immigration judge has noted the withdrawal, removal should proceed without delay.

Once he has withdrawn his appeal, advise him that he has no further right of appeal from abroad.

If a person withdraws his appeal but subsequently appeals from abroad, send the appeal to APC with a copy of the original withdrawal form. It is for the Clerk to the Immigration judge to inform the person that he has no right of appeal.

8.2. Change of address while an appeal is outstanding

Notify the appellate authority of any change of address or change of representative in order that notices of appeal can be sent to the correct address. Similarly, in detained cases, inform the appellate authority and the relevant casework unit (when detention has been for less than 28 days) or MODCU (where a person has been detained for 28 days or more) if temporary admission is granted or if a detainee is moved to another centre.

Fax form IS96A (notification to DCA re Temporary Release) to the AIT at the appropriate Hearing Centre.

It should be noted, however, that once appeal papers have been sent to the AIT, it is the appellant's responsibility to ensure the appellate authority is able to correspond with them.

8.3 Media interest

Refer enquiries from the press about appeals to the Clerk to the Immigration judge, or in the case of Tribunal hearings, to the Lord Chancellor's Press Office, on 0207 210 8512/3.