

Chapter 27 – Index

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27 Third Country Cases

Paragraph 345 of the Immigration Rules provides for the Secretary of State to decline to examine an asylum application without substantive consideration if there is a safe third country to which the applicant can be sent.

The Rules state that the Secretary of State shall not remove an asylum applicant without examining his claim to refugee status substantively unless:

- ♦ The asylum applicant has not arrived in the UK directly from the country in which he claims to fear persecution and has had an opportunity, at the border or within the third country, to make contact with the authorities of that country to seek their protection; **or**
- ♦ There is other clear evidence of his admissibility to a third country.

27.1. Legislation in third country cases

The 1996 Act introduced new procedures for dealing with third country cases, including a non-suspensive right of appeal for removals to certain safe third countries, i.e. a right of appeal exercisable only after removal.

Amended legislation dealing with third country cases was introduced by the Immigration and Asylum Act 1999 (“the 1999 Act”) which came into force on 2 October 2000. These provisions were further amended by the Nationality, Immigration and Asylum Act 2002 (“the 2002 Act”).

Safe third country legislation is now found at Section 33 and Schedule 3 to the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (“the 2004 Act”) which came into force on 1

October 2004. Transitional provisions mean that asylum claims which were certified as third country cases under section 11 or 12 of the 1999 Act before 1 October 2004 will continue to be dealt with under the provisions contained in the 1999 Act and 2002 Act. All claims certified as third country cases on or after 1 October 2004 should be dealt with under the provisions contained in Schedule 3 to the 2004 Act.

Part 2 of Schedule 3 lists all the EU Member States plus Iceland and Norway as safe countries in that they are places:

- ◆ where a person's life and liberty are not threatened by reason of his race, religion, nationality, membership of a particular social group or political opinion,
- ◆ from which a person will not be sent to another State in contravention of his rights under the European Convention of Human Rights, and
- ◆ From which a person will not be sent otherwise than in accordance with the Refugee Convention.

Parts 3 and 4 of Schedule 3 allows the Secretary of State to specify additional States as safe although the consequences of inclusion on these lists differ slightly. At present, there are no countries on those lists. Part 5 of Schedule 3 states that the Secretary of State may certify a State as being safe for an individual.

Transfers to countries covered by the Dublin Regulations (i.e. the EU member states plus Iceland and Norway) must comply with the requirements of the Regulations and should follow the procedures set out in Repeat asylum claims.

27.2. Procedures in potential third country case (non-Dublin)

- ◆ **do not conduct a full screening interview prior to referring to the Third Country Unit (TCU), screening can be conducted after referral;**
- ◆ Contact the Third Country Unit immediately who will advise whether the case is suitable to be considered on third country grounds. (Weekdays only - 020 8760 2429/2101 Fax 2648/2951).

- ◆ Note that TCU requires documentary evidence that the applicant arrived **directly** from a safe third country and had the opportunity to seek asylum there.
- ◆ Fax TCU all relevant documentation.
- ◆ If TCU decide to refuse on third country grounds, they will fax the Third Country Certificate (TCC), and a notification to third country authority letter to the enforcement office. (Then:
 - ◆ obtain authority for removal from the Inspector (since such cases are usually delegated types);

Then

where removal is to a country listed in Part 2, Part 3, Part 4 or certified as safe under Part 5 in the 2004 Act, set specific removal directions for the first available direct flight to the third country and serve

- ◆ TCC;
- ◆ Notice of Appeal IS87 (Non UK)

(These forms must be served **in person** as soon as possible. Explain, with an interpreter if necessary, the reasons for refusal, how an appeal can be lodged and where advice can be sought (i.e. from the IAS, RLC or the Law Centre (Northern Ireland));

- ◆ Completed notification letter to third country authority;
- ◆ IS151a (Part 2) to an illegal entrant, IS82D if the applicant is to be refused entry, or IS85 (TCNS) for a crew member;
- ◆ Notice of Appeal IS87 (Non UK)

And

- ♦ **(non-POISE locations only)** in all cases where a third country certificate is served, a copy of the first page of the letter **clearly annotated with the date served/posted** must be faxed to the Data Entry Unit within 24 hours (see 21.16.1);

*for an illegal entrant who entered in breach of a deportation order.

27.3. Appeals in Third Country cases

Appeals in third country cases are against the immigration decision which accompanies the third country certificate.

Applicants who have been removed to a third country with a non-suspensive right of appeal will have 28 working days in which to lodge an appeal.

A person entitled to exercise a right of appeal before removal will have 10 working days to lodge an appeal.

Neither the Secretary of State nor the appellant has a right of appeal to the Tribunal against an immigration judge's decision in a third country case.

Any appeals received at enforcement offices should be sent to ASS.

Under the appeal provisions of the 2002 Act, all immigration decisions, such as refusal of leave to enter or a decision to remove as an illegal entrant or crew member, attract a right of appeal on a range of possible grounds. Where an asylum or human rights claim has been made, the person can stay in the UK while the appeal is pending, unless an exception applies.

Such an exception applies when third country certificates are made under Schedule 3 to the 2004 Act and, where necessary, any relevant **human rights** claims are certified as "clearly unfounded" (paragraph 5(4) of Schedule 3 to the 2004 Act in relation to Dublin countries or paragraphs 10(4), 15(4), or 19(c) as appropriate in other cases). Where the appeal must be made from abroad the appellant has 28 days from departure from the UK to return the notice of appeal to APC, and the grounds cannot include asylum. Where the appeal can be made in the UK (because, for example, a human rights claim is not certified as "clearly unfounded") the time limit for appealing is 10 working days from service of the decision.

Note that any appeal forms returned in error to a port or enforcement office should be passed to APC.

Generally speaking, appeals on the ground of **race discrimination** are dealt with in exactly the same way as appeals on all other grounds. Section 84(1) (b) of the 2002 Act specifies race discrimination as a distinct ground of appeal against an immigration decision under section 82. It is no longer necessary for a person to make a post-decision allegation in order to trigger the right of appeal. However, an appeal on race grounds will not suspend removal action. The appellant is not entitled to remain in the UK while a race appeal is heard, unless another ground of the appeal is suspensive (such as an asylum claim, for instance). In third country cases therefore any appeal on race grounds will only be suspensive if there is also a human rights claim which is not certified as “clearly unfounded”.

27.4 Third Country cases and Human Rights/Racial Discrimination appeals

A person subject to third country action cannot be removed from the UK if he has an appeal outstanding citing Human Rights grounds of appeal, under section 82 of the 2002 Act. This requirement does not apply where, under section 93 of the 2002 Act, the Secretary of State has certified that such a claim is manifestly unfounded. Refer such cases to TCU **before** serving any appeal papers.

27.5 Judicial review in Third Country cases

Please refer to chapter 44.2.1