

SELF-HELP TOOL 4: APPEALING AGAINST THE HOME OFFICE

Almost 50% of asylum and humanitarian protection cases win on appeal due to the Home Office's shoddy decision-making. A first asylum claim should always entitle you to the right of appeal if it's refused. A fresh asylum claim does not automatically give you the right to appeal. This is because the Home Office can say it is not sufficiently different to, or stronger than, your first asylum claim.

The Supreme Court has ruled that all Article 8 applications are entitled to appeal in the UK if they are refused ([Supreme Court ruling "Kiarie"](#))

RIGHTS TO APPEAL

Asylum/Humanitarian Protection claims

A Home Office refusal of an asylum claim should make it clear what your right of appeal is. You may be given

- The right to appeal in the UK ("in country right of appeal")
- The right to appeal only after you have been sent back ("out of country right of appeal")

Article 8 applications

The June 2017 decision of the Supreme Court in the case of "*Kiarie*" found that it was unlawful for the HO to deny a right of appeal in the UK in Article 8 cases and a similar challenge is being brought in asylum cases.

HO refusals are sometimes unclear or even deliberately misleading about whether you have the right to appeal. You should check this with your lawyer. If the letter is confusing write immediately and complain to the Home Office.

NO RIGHT TO APPEAL IN THE UK

If you have no right to an in country appeal, or to an appeal at all, this can only be challenged using a judicial review.

The Home Office may give reasons why you don't have the right to appeal in the UK), such as:

- Your case has no hope of success and so it is being considered in the "Non-Suspensive Appeals (NSA) procedure".
You need to challenge the reasons given for this.
- You did not fill out a "One Stop Notice" or provide new evidence earlier.
Explain why you could not do this.

You can be asked to pay the HO legal costs if the judge thinks your judicial review application has no grounds ("without merit"). So make sure your case is as strong as possible by saying why the HO refusal (point 3 below) is wrong.

WHEN YOU RECEIVE YOUR HOME OFFICE REFUSAL LETTER

- 1) Ask your lawyer to explain the letter to you.** If you don't understand what they say ask them to put in writing any questions which remain unclear. Page 41 of the *Self-Help Guide against detention & deportation by Legal Action for Women* (known as the Guide) gives information about how to get the best from your lawyer. If you don't have a lawyer, ask a friend or a supporter to go through it with you. See point 4 below if you still don't understand.
- 2) Make sure you understand the reasons given to refuse you.** This may be difficult and upsetting but it is crucial as the Home Office (HO) will rely on these reasons to oppose your appeal, or your judicial review, to win the right to appeal.
- 3) Answer the reasons the HO uses to refuse you.** If you have a lawyer this should be done in your statement for the appeal. Whether you have a lawyer or not, it is crucial that you understand each reason used against you and to answer each one. E.g. if the HO said you will be safe if you live somewhere else in your country, you should explain why you cannot do that. If you don't have a lawyer, you need to do this to show any prospective lawyers that you have a 50%+ chance of success.
- 4) You have a right to see the grounds for appeal or JR before your lawyer puts them in.** This is important as lawyers may leave out crucial information.
- 5) If you have no lawyer, you have the right to complete the appeal form yourself.** You should explain that you will give the legal reasons once you have found a lawyer. If you are given a date for your appeal ask for an adjournment while you find a lawyer (see sample letter in Self-Help Tool 4).

RIGHTS TO LEGAL AID FOR APPEAL

Asylum appeals: You are entitled to legal aid if your lawyer agrees you have a 50% or more chance of success ("merits test").

Article 8 appeals: You are not entitled to legal aid but your lawyer could make an application for Exceptional Case Funding.

See page 40 of the Guide for more about your right to legal aid.

PREPARING FOR YOUR APPEAL

Read Legal Action for Women's Self-help Guide Against Detention and Deportation, sections: "*How to make your claim as strong as possible*" (page 21) and "*If your claim is refused*" (page 25).

Make a list of the things you need before the hearing with deadlines.

- **Home Office's evidence**

The HO should provide your lawyers with all the evidence and arguments that it will rely on before the appeal. Your lawyers should specifically address this information.

- **Witness statement**

Prepare a statement in your words saying why you are appealing with your solicitor. It

should cover all the reasons given by the HO to refuse you (see point 2 overleaf). The HO may say you are lying using any discrepancies in the evidence that could be easily explained. Or they claim that things didn't happen in the way that you described them. You must answer all these points.

- **Expert evidence**

Ask your lawyers what expert evidence will be needed for your hearing e.g. a psychiatric, medical or country expert report or an expert report on any scars you have. If you are on legal aid your lawyer can apply for an "extension" to pay for these.

If you are too traumatised to give evidence and/or have problems remembering, say so and try to get an expert report from a psychiatrist or counsellor to confirm this.

- **Witnesses**

Discuss with your lawyer what witnesses you want for your hearing. Make sure your lawyer/s have spoken with them beforehand so they know what to expect. If there are key witnesses who can't attend, provide evidence to explain why so that this can't be used against you.

- **Support letters**

Get organisations that support you (e.g. community organisation, church, etc.) to write a letter to explain what help they give you; how much you depend on it; how they think it would affect you to lose that support and more generally what would happen to you if you are sent back.

- **Case conference**

If a barrister is representing you, ask your solicitor to arrange a "case conference" (a meeting) at least a couple of weeks beforehand. This can pin down any further work needed on your statement, additional evidence to corroborate your account, prepare you for what questions your barrister will ask you and what the judge and HO may ask. You can make sure your lawyer has all the information needed for your appeal. Your lawyer can apply for a "legal aid extension" to pay for the conference.

YOU HAVE THE RIGHT TO

- **Put in a "Subject Information Request" for all your case papers.** It can take up to 40 days for the HO to send your file and costs £10 but may provide important information about how your legal case has been dealt with and how it can be pursued now by your lawyers.
You can get the form here: <https://www.gov.uk/government/publications/subject-access-request-form>
- **See the barristers "skeleton argument".** It is crucial you understand in advance what they will be saying.
- **Attend the appeal hearing** and it is important that you and any witnesses do so. It is a chance to speak directly to the judge, including to clarify any questions. **Take supporters with you if possible.**

GOOD LUCK. PLEASE LET US KNOW HOW YOU GET ON.