

# ASYLUM APPEAL HEARINGS – SERVICE OF APPEAL DETERMINATIONS

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## Introduction

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This section sets out guidance for regional asylum teams' Case Owners and team support on the processes and procedures to be followed after the asylum appeal hearing has taken place.

The Asylum and Immigration Tribunal (AIT) will send the determination papers to the appellant 28 days after the date of the promulgation (as stamped on the determination) **unless** they are notified that the determination has been served on the appellant by the UK Border Agency. This is done by an electronic data feed from CID to the AIT database. Therefore the Case Owner must ensure that they have served all allowed determinations before day 24 of this 28 day cycle.

Service should be in person where a reporting event has been set up within the timeframe. Where it is not possible to serve in person, the Case Owner must ensure that the determination is sent by 1st class post to both the appellant and their representative.

The Case Owner must ensure that the date and mode of service (i.e. in person or by post) is noted on the served determination. To ensure the AIT is correctly informed of the service of determination the date and method of service must be noted on the Key Document Tracking screen on CID.

### Application of this instruction in respect of children and those with children

Section 55 of the Borders, Citizenship and Immigration Act 2009 requires the UK Border Agency to carry out its existing functions in a way that takes into account the need to safeguard and promote the welfare of children in the UK. It does not impose any new functions, or override existing functions.

Officers must not apply the actions set out in this instruction either to children or to those with children without having due regard to Section 55. The UK Border Agency instruction 'Arrangements to Safeguard and Promote Children's Welfare in the United Kingdom Border Agency' sets out the key principles to take into account in all Agency activities.

Our statutory duty to children includes the need to demonstrate:

- Fair treatment which meets the same standard a British child would receive;
- The child's interests being made a primary, although not the only consideration;
- No discrimination of any kind;
- Asylum applications are dealt with in a timely fashion;
- Identification of those that might be at risk from harm.

## Appeal Dismissed

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If the appeal is dismissed, the AIT sends the determination to the Appeals Determination Management Unit (ADMU) in the Appeals Directorate. ADMU check to see if the case is being dealt with by an Asylum Team and update CID with the date of receipt. If the Case is being dealt with by an Asylum Team, ADMU scan the determination and send via e mail to the Asylum Team dealing with the case.

The appellant will have an onwards right of appeal to apply for permission to appeal to the AIT, if they consider a material error in law has been made.

The Case Owner must prepare the appropriate section within the 'Appeal Decision Service Record' (**ASL.3383** in DocGen) and serve the dismissed determination in person. The Case Owner must complete both the appeal outcome and date on CID and the Key Document tracking screen to show the date and method of service once the determination has been served. The Case Owner must:

- Explain to the appellant that if they consider that an error of law has been made, they may apply for a reconsideration order, within 5 working days.
- Promote Assisted Voluntary Return (AVR)
- Provide the covering letter from the AIT informing the appellant of the rights of either party to apply for a review of the Tribunal's decision.
- Provide an **AIT/103A** (application for reconsideration for In-Country appellants) form
- Provide a copy of A Guide to Completing **AIT/103A**.
- Consider termination of asylum support.

If AIT has not provided these forms, the Case Owner can print them direct from the AIT website using the following links:

Form AIT/103A

A Guide to Completing AIT/103A

For further information on discontinuing Asylum Support, see Status Cessation Guidance.

For detailed instructions on Onward Rights of Appeal see: Onward Rights of Appeal

## Appeal Allowed

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If an appeal against the refusal of an asylum claim has been allowed, the UK Border Agency has an opportunity to exercise their onwards right of appeal and seek permission to appeal to the AIT. This can only succeed if the determination by the judge contains a material “error of law”.

Following the appeal hearing, the AIT will send the allowed determination to ADMU. On day one of receipt of the determination, ADMU will scan the determination and email it to the regional asylum team determination inbox and copy it to the Specialist Appeals Team (SAT) in Angel Square Presenting Officers Unit (POU), by 12 noon when possible. ADMU update CID admin events to reflect that the determination has been received and has been passed on to the relevant regional asylum team. The Case Owner must read the determination and if necessary contact SAT for technical advice on whether there is an “error of law” or not. The Case Owner will then need to complete the “error of law proforma” and email or fax it to SAT. The Case Owner will send this form and all relevant documents to SAT by 4:30pm on day two.

If the Case Owner and the Senior Caseworker in consultation with SAT considers that there is a material error of law in the determination which they wish to challenge, the Case Owner must instruct SAT to apply for a reconsideration of the appeal.

SAT may bring to the attention of a case owner a decision where they think an error of law has been made. In all cases, both the case owner and SAT must be in agreement before an application for reconsideration is made. Where either a case owner or the SAT feel strongly that the Judge’s decision should not be challenged, there should be no application for a reconsideration order. In cases of disagreement, the Case Owner should consult a Senior Caseworker.

The Case Owner must retain the file. In addition to the proforma, the Case Owner must identify any useful and relevant documents needed for the reconsideration order using the document checklist, and send them to SAT. The SAT Caseworker may contact the Case Owner to clarify aspects of the case. When making the application for reconsideration order, the SAT Caseworker will always refer to the electronic appeal hearing minutes on the document generator (ICD.2742) prepared by the Case Owner. If there is no minute sheet, the SAT Caseworker will look for an equivalent minute in the notes field on CID. Case Owners must ensure that the electronic appeal hearing minutes on the Document Generator system are completed promptly following the appeal hearing.

**If the Specialist Appeals Team goes ahead to request a reconsideration of the appeal**, they will inform the AIT immediately by fax. The Case Owner must obtain confirmation from SAT that they have sent the application to the AIT. The Case Owner must then serve the determination by recorded delivery post on the same day that the application for reconsideration is lodged with the AIT. The Case Owner must then notify SAT with details of the record of service. A copy of the determination and record of service must be retained on the file. This is done because there is not enough time to arrange for personal service by a Case Owner. The determination must be served/posted to the appellant no later than the same day that the UK Border Agency lodges the application for reconsideration with the AIT. If this is not done the application for reconsideration will be invalid because the UK Border Agency has failed to comply with Rule 23 of the 2005 Procedure Rules.

CID must be updated on the day the determination is served to show the appeal outcome and date. Case Owners must also complete Key Document Tracking on the same day to show the method and date the determination was served. This will automatically inform the AIT of the service of the determination and avoid the AIT reserving the determination. The appeals screen

must also be updated with the following information: 'Appeals Outcome details' and the appeal Outcome date', Reconsideration sought (High Court Review Filter), and details of the asylum team responsible, the date reconsideration was sought and who by. Note: the appeals screen must not be updated until the determination is served.

If the Case Owner decides not to request a reconsideration order, the Case Owner must notify their Senior Caseworker of their decision. The Senior Caseworker must sign off the determination. The Case Owner must then serve the determination to the appellant and take the following action.

The Case Owner must:

- Prepare the appropriate section of **ASL.3383** and implement the appeal determination by granting asylum, Humanitarian Protection, or Discretionary Leave as appropriate. A direction on this will be given by the SCW who has signed off the decision on the determination. The Case Owner should complete the appeal outcome and KDT screen on CID on the same day the determination has been served or posted.

Further instructions on serving decisions, granting Humanitarian Protection, granting Discretionary Leave, and granting asylum can be found in Decision Service-Outright Refusal, Decision Service-Grant of Asylum/HP/DL and in Implementing Substantive Decision.

Case Owners must ensure that all allowed determinations not being challenged must be served by day 24 after the date of promulgation.

For detailed instructions on Onward Rights of Appeal see: Onward Rights of Appeal

Where determinations are not served by day 28 the AIT will re-serve the determination on the appellant. Amended notices will be issued to ADMU with a new appeal outcome date. ADMU scan and email the notices onto the relevant asylum team. The Case Owner is then responsible for updating the appeal outcome details and KDT on CID.

## Asylum Decision Withdrawn by the Agency

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It will only very rarely be appropriate for the UK Border Agency to withdraw an asylum decision. The **only** circumstances where it would be right to do so are where the decision to refuse asylum was **fundamentally flawed** and needs to be re-taken. The most likely scenario is where non-compliance was a major factor in the original decision, and, for example, it subsequently comes to light that there was a valid reason why they had been unable to attend a substantive asylum interview. It should be stressed that, where asylum claims have been considered within the end-to-end process, regular contact with the appellant would mean that this was unlikely. **Where the Case Owner considers that it would be appropriate to withdraw the asylum decision, the approval of a senior caseworker must be obtained.**

The AIT cannot require the UK Border Agency to withdraw a decision. Should an Immigration Judge request this, either at a CMR or at a substantive appeal hearing, the Case Owner presenting the case should not agree, and should point out that the Judge may allow the appeal if the original asylum decision is considered to be incorrect.

Where it is agreed that an asylum decision is flawed and will be withdrawn the Case Owner should:

- Contact the appellant (and their representative if they have one) as soon as possible, preferably by phone, to inform them of this decision.
- Advise the appellant clearly that withdrawal of the original decision does **NOT** imply that, after reconsideration, the application will necessarily be successful.
- Prepare and dispatch (or serve in person) a withdrawal of decision letter ACD.2214 (in country cases) or ACD.2215 (port cases). Templates are available in DocGen. Care should be taken to delete the appropriate sections of the letter, to fit the circumstances of the case.
- AIT should be informed in writing, that the UK Border Agency has withdrawn the decision.
- The Case Owner should make arrangements to reconsider the case, including arranging an interview if one has not previously taken place.

## Appeal Withdrawn by the Appellant

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Where an appeal has been lodged, but the appellant decides they no longer wish to proceed, they must provide a notice of withdrawal in writing to the AIT. Because the appellant has appealed to the appellate authorities, not to the UK Border Agency, the appeal cannot be finally withdrawn until the appellate authorities have issued written acknowledgement of the withdrawal. AIT notifies APC who in turn inform the relevant POU or Asylum Team.

Once AIT has issued a written acknowledgement of the withdrawal of the appeal, the appellant is Appeal Rights Exhausted (ARE) and is therefore liable for removal. The Case Owner should:

- Promote Assisted Voluntary Return.
- Consider termination of asylum support.

For further information on discontinuing Asylum Support, see Status Cessation Guidance

If the appellant is unwilling to partake in Assisted Voluntary Return, the Case Owner should

- Commence Enforcement action see Removal

### Reopening Withdrawn Appeals

A withdrawn appeal **cannot** be reinstated. If an appellant wishes to argue that the appeal was not withdrawn correctly, then they would have to seek a Judicial Review.

The 'Appeal Maintenance' screen on CID should be updated to record that the appeal has been withdrawn.

## Appeal Conceded

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It will only very rarely be appropriate to concede an appeal. To concede the appeal means that the Agency is inviting the AIT to allow the appeal, and has no intention of defending the original decision. The concession of an appeal binds the AIT and cannot later be withdrawn. There should be no reason to concede an appeal that is arguable either on the facts or in law. All decisions to concede an appeal must be approved by a Senior Caseworker.

Circumstances where conceding the appeal may be considered are:

### Changes in the law

It may be appropriate to concede an appeal where there has been a change in the law since the date of decision, which fundamentally affects the appeal in the appellant's favour. Alternatively, it may be clear that the decision-maker did not consider the law correctly and that correct application of the law would have led to a grant of asylum. The Case Owner presenting the appeal would need to be satisfied that the application of the law currently in force would in the normal course of the decision making process lead to a grant of asylum, given the accepted facts of the appellant's case.

### Changes in the Objective Situation

It may be appropriate to concede where there have been developments in a particular country which mean that there is real risk that the appellant would be persecuted for a Convention reason if returned (applying the relevant standard).

An appeal should only be conceded in such circumstances if the Country Specific Asylum Policy Team in AAPD has advised that the objective evidence in the particular country has changed sufficiently since the date of decision so as to affect a certain category of claim.

The decision should be implemented according to the guidance in Implementing Substantive Decision.



## Glossary

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<b>Term</b>	<b>Meaning</b>
ACD.2214	After Entry Withdrawal Letter (In Country)
ACD.2215	On Entry Withdrawal Letter (Port)
ICD.2742	File Minute to SAT
AIT/103a	Application for Reconsideration (In Country)
ASL.3383	Appeal Decision Service Record

# Document Control

## Change Record

Version	Authors	Date	Change Reference
1.0	SS	01/02/2007	Reviewed & style changed to suit web 'look'
2.0	DP	03/05/2007	Corrections applied
3.0	SS	30/05/2007	Updated to include reference to 'Appeal Decision Service Record'
4.0	SY	10/08/2007	Fully revised 'Appeal Allowed' topic
5.0	JW	09/10/2007	Updated to reflect the new onwards rights process. ORAT replaced by SAT
6.0	GT	26/11/2008	Update branding only
6.1	ZKZ	30/09/09	Updated to include new Instruction on Children.