



Home Office

# Withdrawing decisions

Version 4.0

Guidance for Presenting Officers

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# About this guidance

## Withdrawing decisions and conceding appeals

This guidance advises Presenting Officers when it would be appropriate to withdraw a decision or concede a case that is being appealed. It replaces all other guidance on these issues. The guidance takes into account the changes to the procedure rules from 20 October 2014 and the changes to the appeals system introduced by the Immigration Act 2014.

## Contacts

If you have any questions about the guidance and your line manager or senior caseworker cannot help you or you think that the guidance has factual errors then email the Appeals Policy Team.

If you notice any formatting errors in this guidance (broken links, spelling mistakes and so on) or have any comments about the layout or navigability of the guidance then you can email the Guidance Rules and Forms team.

## Publication

Below is information on when this version of the guidance was published:

- version **4.0**
- published for Home Office staff on **09 December 2021**

## Changes from last version of this guidance

This version updates the guidance on the process to be followed where an exclusion order or exclusion decision is in place.

### Related content

[Contents](#)

### Related external links

[First tier procedural rules](#)

[The Tribunal Procedure \(Upper Tribunal\) Rules 2008](#)

# Pre-hearing checks for sustainability of decisions being appealed

This page sets out the pre-hearing checks process for Presenting Officers to take prior to the appeal hearing.

Presenting Officers should follow the process below:

1. Do you have a respondent's bundle (which should include the decision under appeal)?:
  - if not, obtain it for file and (if necessary) serve on appellant / representative and Tribunal - in entry clearance cases CRS should be checked for service before the entry clearance officer (ECO) is asked to provide a bundle
  - if yes, is the bundle complete?
  - if not, obtain and serve missing documents
2. Do you have an appellant's bundle?:
  - if yes, go to the checks in step 3 below
  - if no, contact appellant/ representative and request it is served on the Presenting Officers unit (POU) immediately by fax or e-mail.
3. Consider whether the decision is sustainable as described in the section on [sustainable decision making](#). You should also consider whether new reasons for refusal need to be given as described in the section on [new grounds or reasons](#).
4. Inform all parties of any changes to the case in line with the guidance on [sustainable decision making](#) or [new grounds or reason](#).

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# Sustainable decision making

This page tells you how to decide whether the decision under appeal is sustainable.

In the case of [Glushkov SSHD \(2008\)](#) EWHC 2290 Collins J said:

## Paragraph 18

“It is clear beyond any doubt, in my view, that the Secretary of State must not use the withdrawal power as a tactical exercise to avoid applying for an adjournment. She must only use it if she is genuinely of the view that she might change her mind on reconsidering the material that is put before her. It would be a wrongful exercise, and unfair to an appellant, if she were simply to use this power because she wanted more time to deal with the material that was put forward but has no intention of changing her mind as a result of it.”

A decision should only be withdrawn with a view to granting leave. You do not have to be certain that leave will be granted, but you must be genuinely of the view that it might.

For example, a decision may be withdrawn because:

- there is a clear caseworking error which means that the decision is fatally flawed
- there has been a clear change in circumstances such as a change in country conditions or a change in policy
- there is new evidence available, which when assessed on the appropriate standard as genuine, leads to the conclusion that the decision to refuse is no longer sustainable and a grant of leave or status, subject to security and other checks, is now appropriate also (see [adjournments](#))

You must not pursue an appeal where it is clear that the decision is not sustainable, and you are genuinely of the view that leave may be granted.

For the process to follow when withdrawing a decision see: [Withdrawing decisions: checklist for presenting officers](#)

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# Adjournments

This page tells you about the circumstances when a Presenting Officer must seek an adjournment of the appeal.

The guidance on [sustainable decision-making](#) sets out when you should withdraw a decision. In accordance with that guidance when you are confronted with a new issue or evidence, which if genuine may lead to a grant of leave, you should normally withdraw the decision. In circumstances where the reason for withdrawing the decision is a new issue or new evidence that is raised late it may be appropriate to seek costs.

An adjournment should be sought where it is not reasonably clear that the new evidence or ground will lead to a grant of leave but where it needs to be considered in more detail. An example of this would be seeking an adjournment to check whether a document is genuine where, even if the document was genuine, it would not on its own be likely to lead to grant of leave; if it was false that may strengthen the refusal. This approach is consistent with what the High Court said in [Chichvarkin \(2010\) EWHC 1858](#) that an adjournment is “appropriate where the SSHD wishes to maintain the challenged decision and is seeking further material to support her case.”

In these circumstances you must explain to the Tribunal what the new issue or evidence is and why an adjournment is necessary. If the adjournment is granted it may also be appropriate to seek costs where the new evidence or issue was raised late.

Presenting staff should only refer matters back to a decision-making area where they are mandated to do so or it is clear that specialist or additional knowledge from the decision maker will benefit the consideration and that knowledge cannot reasonably be obtained by the Presenting Officer. For details see: [Approval to withdraw a decision or concede an appeal](#).

Where a request for an adjournment is refused the decision should not then be withdrawn. You must record the reasons for seeking an adjournment and the reasons why it was refused in the hearing minute. You should then present the Secretary of State’s case. After the hearing, the Home Office will consider the minute to decide whether to challenge the refusal of an adjournment or any allowed appeal on procedural grounds.

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# New grounds or reasons in appeals cases

This page tells you what to do when grounds or reasons that could have been relied upon in the refusal letter but which were not included by the decision maker or have since become apparent.

An appealable decision should not be withdrawn simply because better or stronger reasons for refusal could be given. Where you or another decision maker identifies other grounds for refusal you should raise these in writing. Where you consider there are other grounds for refusal then you must discuss this with the Appeals, Litigation and Administrative Review (ALAR) senior caseworker (SCW). If the ALAR SCW agrees that new grounds should be raised, then the Presenting Officer will issue a statement explaining those grounds.

Do not return cases of this type to the decision maker for reconsideration. Any decision to raise a new ground or reason should be made by the Presenting Officer, in conjunction with an ALAR SCW, and the statement should be issued by the Presenting Officer Unit.

Under Rule 24 (2) of the [First-tier procedure rules](#), if you change or add to the reasons for refusal that were given at the time of the decision under challenge, you must issue a written statement which sets out both:

- that the Secretary of State opposes the appellant's case
- the grounds for that opposition

The statement must be provided as soon as possible and in any event within 28 days of the appeal notice being sent from the Tribunal, to comply with Rule 24(3). It must be sent to the Tribunal and to the other parties.

If it is not possible to meet the time limit, you must issue the statement as soon as possible. When doing this you should seek an extension of time. Where it is not possible to comply before the hearing you must raise the new reasons at the hearing. If the judge raises the fact that the procedure rules have not been met, you must explain the reasons why this did not happen. You can remind the judge that under rule 4 of the procedure rules there is a power to extend or shorten the time for complying with any rule, practice direction or direction. It will be for the judge to decide whether they will allow any new reasons to be raised. An appealable decision should not be withdrawn where the judge refuses to admit the new ground/reasons; the appeal should be argued on the existing grounds unless the decision is unsustainable on those grounds.

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# Approval to withdraw a decision or concede an appeal

This page tells you about getting approval if you want to withdraw a decision in an appeals case.

Signed off Presenting staff are authorised to withdraw a decision without the approval of an ALAR SCW except in the following circumstances:

- if the Presenting Officer is in Court
- if the decision is the subject of 'Operational' or 'Intel' restrictions

In the above situations an ALAR SCW may approve withdrawal of a decision.

Presenting Staff are 'signed off' for the purposes of having authority to withdraw when all of the following apply:

- they have completed their foundation training
- they have completed their consolidation training
- it has been locally agreed by an ALAR SCW that they have authority to withdraw decisions within the agreed assurance processes

Any Presenting staff who are not 'signed off' must seek ALAR SCW approval to withdraw in all decision types.

In Foreign National Offender Removals Command (FNO RC), Special Cases Directorate (SCD) or Border Force cases you must consult and seek approval as below:

- withdrawal of FNO RC decisions must be approved by a G7 in FNO RC
- withdrawal of SCD decisions must be approved by a SCD SEO or Grade 7
- withdrawal of Border Force decisions must be approved by an HMI (or SEO) in the relevant casework team

You must not approach FNO RC, SCD or Border Force to propose withdrawal/concession without first being authorised to do so by an ALAR SCW.

You must not withdraw any decision where an exclusion decision or exclusion order is in place unless there is prior agreement to do so from the Home Secretary, Minister of State or, where the exclusion order was made by the Director of Foreign National Offenders (FNO) Return Command, by the Director. In any appeal where there is an exclusion decision or exclusion order in place you will need to contact the team that recommended exclusion and if they agree the decision under appeal should be withdrawn a submission will need to be sent to the appropriate Minister or the Director of FNO Returns Command to get their agreement. Only after there is agreement that the exclusion decision or exclusion order can be revoked can the

decision under appeal be withdrawn. For further details on exclusion decisions and exclusion orders see the guidance in Exclusion from the UK.

Decisions to concede (as opposed to decisions to withdraw for reconsideration) must be approved by an ALAR SCW or G7. For further details on concessions see [Concessions in an appeal](#).

All ALAR SCW authorisations and approvals must be recorded in the notes screen on CID. All rejected requests to withdraw must also be recorded in the notes screen on CID by the ALAR SCW.

#### **Related content**

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# Completing withdrawals and notifying HM Courts and Tribunals Service (HMCTS), representatives, appellants and international posts

This page tells you how to complete withdrawals and notify HMCTS, representatives, the appellant and international posts when a decision under appeal is being withdrawn.

1. The Presenting Officer decides to withdraw a decision, and has any authority required to do so.
2. For international cases, including those decided by Sheffield Visa Section, where there is no CID record already created the Presenting Officer must ask designated POU administrative staff to create a new CID record in accordance with local processes. This must be done as soon as possible due to impending hearing dates.
3. The Presenting Officer must complete an ICD.5209 pro forma on DocGen in all cases within 24 hours. The ICD.5209 must contain the following:
  - name of appellant and all dependents
  - the full reasons for the withdrawal.
  - if the withdrawal is due to the production of late evidence, the date upon which the late evidence was received
  - what leave is to be granted
4. The Presenting Officer must ask designated POU administrative staff to advise HMCTS, representatives, and appellants of the withdrawal, using the standard template (see: [Template letter: withdrawing decisions at HMCTS](#) templates .
5. Designated POU administrative staff complete the standard template letter including details of all dependants. (Information regarding dependants and whether the appeal has been withdrawn due to late evidence will be recorded on the ICD.5209 pro forma. If late evidence is the reason for the decision being withdrawn, this must be made clear.)
6. Designated POU administrative staff must inform HMCTS, representatives and appellants as soon as is practicable and in any event before the hearing date. This is required for all case types.
7. For international cases, the ICD.5209 pro forma must be emailed to the relevant post within 24 hours (if POU administrative staff have capacity, they must undertake this, but it is the Presenting Officer's responsibility to ensure this is completed).

8. In all international cases the Presenting Officer must update CRS Notes to show that the decision has been withdrawn and that the ICD.5209 has been sent to the post. The Presenting Officer must also include the main reasons for the withdrawal.
9. When informing the post, in international cases, the email subject line must include the following information:
  - the words 'POU withdrawal'
  - FCO post reference (for example: SHE 12345)
  - HO reference
  - HMCTS reference (appeal reference number)
10. As a final safeguard, Presenting Officers must ensure that all withdrawal / implementation actions as required by the desk aid are carried out within 24 hours.

Unless HMCTS informs the Home Office that the appeal hearing is not going ahead the Presenting Officer must still attend and should at the outset inform the Judge and the appellant that the decision has been withdrawn. The Presenting Officer must explain why that decision has been taken and what will happen next.

Regardless of the outcome of the appeal, the withdrawal of the decision is effective, however in making a new decision the Home Office will be bound by the findings of the Tribunal.

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# Concessions in an appeal

This page tells you about concessions in an appeal and when it might be appropriate to make them.

When conceding an appeal you are accepting that the appeal should be allowed. If there is more than one ground of appeal you must make clear whether you are conceding all grounds of appeal or only one ground of appeal. This is important as for example, the leave granted in a protection claim is different from the leave granted in a human rights claim. An applicant may want to continue with their remaining ground(s) of appeal if only one ground is being conceded.

You may make concessions during the appeal where appropriate and justified by the evidence. It will not normally be appropriate to concede an appeal at the outset of a hearing as if the decision is unsustainable it should be withdrawn. If after hearing the evidence you consider that it is appropriate to concede the appeal you should ask for a brief adjournment to consult with an ALAR SCW.

In respect of the ground you are conceding you should make it clear to the Tribunal whether this means you are accepting that the refusal decision is wrong, or whether you consider the decision sustainable without that particular ground. If you are not aware of any other grounds for refusal, you can say that leave will be granted subject to normal security and other checks being undertaken.

If you are minded to withdraw a decision or concede an appeal, you must ensure that you have [the necessary approval](#) in place. If the issue arises during the hearing, you should ask for an adjournment to consult a senior caseworker.

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# Withdrawn decisions where the appeal continues

This page tells you about cases when the decision under appeal is withdrawn and the appeal continues.

The [First tier procedure rules](#) allow for an appeal to continue even when the underlying decision has been withdrawn. Rule 17 (2) states that:

“the Tribunal must (save for good reason) treat an appeal as withdrawn if the respondent notifies the Tribunal and each other party that the decision (or where the appeal relates to more than one decision, all of the decisions) to which the appeal relates has been withdrawn and specifies the reasons for the withdrawal of the decision”.

This brings the First-tier Tribunal procedure rules in line with Upper Tribunal Rules which has a similar provision at 17 (2) of [The Tribunal Procedure \(Upper Tribunal\) Rules 2008](#).

To comply with the procedure rules it is important that you provide the Tribunal with clear reasons why the decision is being withdrawn.

In the case of [SM \(Pakistan\) 2014 UKUT 64](#) the Tribunal gave guidance as to when an appeal should continue where the decision has been withdrawn. One of the principles is that “regard should be had to the principle, that the respondent should ordinarily be the decision maker in the immigration field.” You should refer to SM in any case where the decision has been withdrawn and notwithstanding this the Tribunal is minded to proceed to a hearing.

If the Appeal Hearing does proceed, Presenting Staff will play a limited role in proceedings Presenting Staff are to reiterate that the decision has been withdrawn. However, if the Hearing continues to be heard. cross examination and submissions will be limited to matters that are in contention or to deal with any new evidence or issues. Presenting Staff are to make a full and detailed record of the proceedings on an Appeal Hearing Minute on DocGen.

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# Costs where withdrawals or concessions are being made

This page tells you about costs in appeals cases where the decision is being withdrawn or the appeal is being conceded.

The [First tier procedure](#) rules introduced a power to award costs at the First-tier Tribunal.

You must explain to the Tribunal the reasons why the decision is being withdrawn or the appeal conceded. You should be prepared for the possibility of an application for costs being made against the Home Office.

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**Official sensitive: start of section**

The information on this page has been removed as it is restricted for internal Home Office use.

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**Official sensitive: start of section**

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# Withdrawing decisions: checklist for Presenting Officers

This page tells you the steps Presenting Officers should follow when a decision under appeal is being withdrawn.

When withdrawing a decision, Presenting Staff must:

1. Complete the withdrawal form (ICD.5209 on DocGen) setting out the reasons for the withdrawal and the period of Leave that is to be granted. This must be completed within 24 hours. POs must ensure that the ICD.5209 is printed as a virtual document and accessible as a 'Printed Document' in DocGen.
2. Presenting Officer to update CID Appeals screen:

## CID - Appeals screen guide

The screenshot shows the 'CID - Appeals screen guide' interface. The 'Hearings' section is highlighted with four numbered callouts (1, 2, 3, 4) indicating fields to be updated: 1. Hearing Outcome, 2. Outcome Date, 3. Presenting Officer, and 4. P.O. Team. The interface also shows 'Appeal Header' and 'Associated Cases Outcomes' sections.

| Hearing Type | DCA Status ID | Hearing Centre | Scheduled on | List No. | Hearing Outcome | Outcome Date | Presenting Officer | P.O. Team |
|--------------|---------------|----------------|--------------|----------|-----------------|--------------|--------------------|-----------|
|              |               |                |              |          |                 |              |                    |           |
|              |               |                |              |          |                 |              |                    |           |
|              |               |                |              |          |                 |              |                    |           |

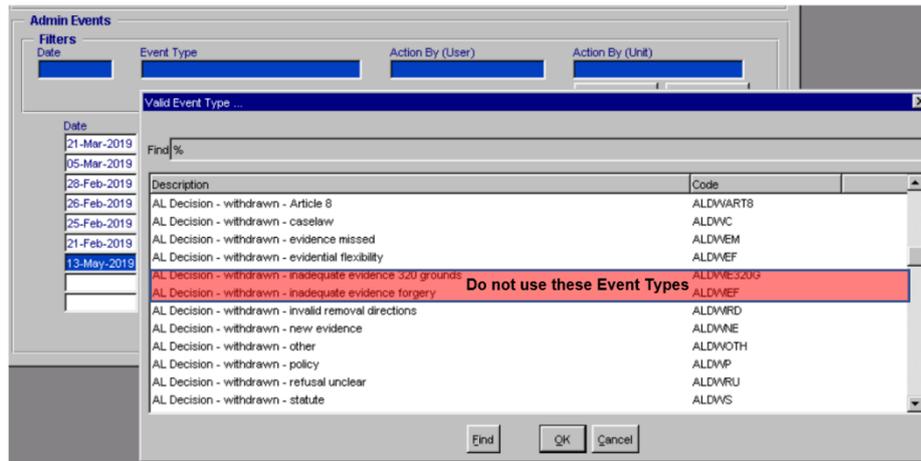
  

| COH ID   | Full Name | Date        | Case Type                    | Case Outcome             | Outcome Date/Time | Association | Appeal Linked |
|----------|-----------|-------------|------------------------------|--------------------------|-------------------|-------------|---------------|
| 25316747 | CCD Uat   | 01-Aug-2016 | Criminal Case - Public Polic | DO Not Pursued - HO deci | 15-Sep-2016 08    | Main Applc  |               |
| 26631266 | CCD Uat   | 10-Apr-2017 | Criminal Case - Public Polic | Convicted                | 20-Apr-2017 14    | Main Applc  |               |
| 27427991 | CCD Uat   | 18-Sep-2017 | Criminal Case - Public Polic | Deport Pursued EEA Cert  | 19-Sep-2017 10    | Main Applc  |               |
| 28326927 | CCD Uat   | 18-Sep-2017 | Criminal Case - Public Polic | Closed - Multiple PID    | 15-Feb-2018 16    | Main Applc  |               |

Presenting Officer to complete CID fields 1 – 4 in the 'Hearings' section:

1. Hearing Outcome with Withdrawn Pre-Hearing
  2. Outcome Date (date the decision is withdrawn)
  3. Presenting Officer (name of PO)
  4. PO Team (name of PO's Team).
3. Update Admin Events screen with appropriate reason. To make a new entry in Admin Events, select the appropriate 'event type'. A list of the event types can be seen by pressing F9 – see below. The date, user and unit details will be populated automatically.

## CID – Admin Events screen



HMCTS, appellants representatives, appellant and international posts must be notified in writing that the decision has been withdrawn. If POU administrative resources permit, they must undertake this function but it is the Presenting Officer's responsibility to ensure this is completed.

Send file to Iron Mountain Storage

**[This checklist is to be read in conjunction with Completing withdrawals and notifying HMCTS, representatives, appellants and international posts.](#)**

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# Withdrawing decisions: checklist for Senior Caseworkers

This page tells you the steps senior caseworkers should follow when they receive a proposal to withdraw a decision.

In all cases where an ALAR SCW is approached by Presenting Staff to discuss the withdrawal of a decision, a CID note must be made:

When a withdrawal is authorised, the note must state:

‘I have considered the withdrawal proposal made by **(insert PO’s name)** on **(insert date)** and authorise it for the following reasons: **(insert reasons)**.’

Where authority to withdraw is granted, the Presenting Officer then undertakes the tasks as defined on the checklist for Presenting Officers.

When a withdrawal is refused, the note must state:

‘I have considered the withdrawal proposal made by **(insert PO’s name)** on **(insert date)** and refuse it for the following reasons: **(insert reasons)**.’

Where authority to withdraw is refused, the PO must continue with the appeal as instructed by the ALAR SCW.

Complete any spreadsheets as instructed.

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# Withdrawing decisions: checklist for POU administrative staff

This page tells you the steps the POU administrative staff should follow where a decision has been withdrawn and you have been notified of that withdrawal.

Notify HMCTS and the appellant's representatives/appellant in writing that the decision has been withdrawn.

See: [Template letter](#)

For international cases, the ICD.5209 must also be emailed to the relevant post.

When POU administrative staff receive the IA 52 (FTT) or IA 142 (UTT) withdrawal notice from the Immigration and Asylum Chamber, they must scan the notice.

For all cases:

POU Administrative staff must check that the Presenting Officer has fully updated the appeals screen on CID ([checklist for presenting officers when withdrawing decisions](#)).

If the Presenting Officer has not updated the appeals screen fully or correctly, POU administrative staff must send an email notification to the relevant SCW and Team Manager.

Upon receipt of the IA 52 (FTT) or IA 142 (UTT) POU administrative staff must update the Appeals Screen:

## CID – Appeals Details screen

The screenshot shows the 'Appeals Details' section of the CID system. It includes a table for 'Appeal Details' and a 'Hearings' section. Numbered callouts indicate the following fields to be updated:

| Right of Appeal Cat. | Section 82(1) - 200 | Out Of Time Issue        | Bundle sent by AT       | Served                   |                 |              |                    |         |
|----------------------|---------------------|--------------------------|-------------------------|--------------------------|-----------------|--------------|--------------------|---------|
| Create Appeal        |                     | <input type="checkbox"/> |                         | <input type="checkbox"/> |                 |              |                    |         |
| Validity Issue       |                     | <input type="checkbox"/> | Appeal Rights Exhausted |                          |                 |              |                    |         |
| Header 1 Of 1        | APC Status          | End                      | Appeal Concluded        |                          |                 |              |                    |         |
| Appeal Details       |                     |                          |                         |                          |                 |              |                    |         |
| Appeal Case Type     | DCA Status ID       | Appeal Outcome           | Outcome Date            | POU Responsible          |                 |              |                    |         |
| First Tier - Hearing | 5118012             | 1                        | 2                       | Glasgow                  |                 |              |                    |         |
| Hearings             |                     |                          |                         |                          |                 |              |                    |         |
| Hearing Type         | DCA Status ID       | Hearing Centre           | Scheduled on            | List No.                 | Hearing Outcome | Outcome Date | Presenting Officer | PO Team |

1. 'Appeal Outcome' with 'Withdrawn by Home Office'
2. 'Outcome Date' with the date of the notice from HMCTS.
3. 'Appeal Concluded' with HMCTS notice date - if withdrawn by Home Office.
4. 'Appeals Rights Exhausted' with HMCTS notice date - if withdrawn by appellant or representatives.

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# Template letter: withdrawing decisions at HMCTS



Home Office

POU Address:

Representatives / Appellant / HMCTS Address:

Date:

Name of appellant and any dependants:

Date of birth of appellant:

Country of origin:

HO Reference:

HMCTS reference:

Hearing Date:

Dear Sirs,

I am writing with regard the above named who has/have an outstanding Appeal before the **First-tier / Upper** Tribunal (Immigration and Asylum Chamber). – **(delete as appropriate)**

This matter has been reviewed ahead of the scheduled hearing.

The review has considered:

- the grounds of appeal
- the evidence submitted
- any material changes since the date of the decision under appeal

Please be advised that new evidence from the **Appellants Representatives / Appellant** was received by the Home Office on **dd/mm/yyyy**. **(delete this line if not relying upon new evidence being received)**.

In the light of the review, it has been concluded that the decision to refuse is no longer appropriate and the immigration decision is therefore withdrawn. **It is**

anticipated that leave /visa/entry clearance will be granted, subject to any further checks that are required and the appellant providing any documents requested. If leave/entry clearance is not granted a new decision will be made.

This letter has been sent to the HMCTS Hearing Centre where the Appeal is due to be heard. The request is for HMCTS to accept this decision as withdrawn and to vacate the appeal hearing.

Yours faithfully

Name:

POU:

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