

# **RAPPORT DU ROYAUME-UNI**

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## INTRODUCTION

It should be noted at the outset that in the United Kingdom the resolution of questions relating to immigrants is resolved primarily through statutory appeal procedures. Under these procedures recourse may be had in the first instance to an official (called an "Adjudicator") and by appeal from his decision to a statutory Appeal Tribunal. Applicants may apply, both on paper and orally, for judicial review by the High Court of the Appellate Authorities' decisions, and also by way of appeal to the Court of Appeal. Thus where the essential validity of the acts or decisions of The Secretary of State in the first instance, or later of an Adjudicator or an Appeal Tribunal, are open to challenge, recourse may be had to the Common Law Jurisdiction of the ordinary courts for review on any of the grounds available in the process of judicial review ; these grounds concern the legality, not the merits, of the decision, and any available appeal procedures must ordinarily be exhausted before judicial review is invoked.

This two-fold aspect of the management of problems of Immigration may at least at first sight make the position in the UK appear to be different from the position in certain of the other Community countries. That difference is due essentially to the fact that the work of judicial review is a function of the ordinary courts of law and those courts are structurally distinct from the adjudicators and the appeal tribunals. Much of the substance of the answers given to the specific questions raised relate to the latter institutions and do not fall within the ordinary practice of the Judges of the Supreme Courts who have the sole jurisdiction in matters of judicial review.

## FIRST CASE

1. It should be noted at the outset that since the foreigner has obtained entry to the UK with a tourist visa and so is in the category of tourist, his attempt to obtain permission to remain in the UK on the grounds of a married person, that is to say under a different category, would be refused. Under the rules which govern practice in immigration matters, it is provided that an application to remain in the UK for a purpose different from that for which the entry clearance was given is to be refused (Rule 102). Unless The Secretary of State was prepared, as in exceptional cases he may, to entertain the application as if it was a matter of his discretion, any opportunity for appeal will be very severely curtailed (Section 19 of the Immigration Act 1971). However in the particular case of an application to stay in the UK on the basis of marriage to a person settled there it is implicit in Rule 131 that an extension may be granted, but the Rule expressly provides that an extension will not be granted unless The Secretary of State is satisfied on a number of conditions of which the first is "that the marriage was not entered into primarily to obtain settlement in the UK". Provided the application for an extension of stay on the basis of marriage was made before the expiry of the period permitted by the tourist visa, then the applicant would have a right of appeal. That appeal would be in the first instance to an Adjudicator and in the second instance to the Immigration Appeal Tribunal.

So far as the work permit is concerned, such permits are under the control of the Department of Employment in the UK. The Secretary of State would refer any application for a work permit to that Department for their consideration. The work permit would not by itself entitle a foreigner to remain in the UK. That matter would be dependent upon his obtaining a resident's permit.

2. The statutory rules which govern the procedure of appeals before an Adjudicator or the Appeals Tribunal (SI 1984 N° 2041 paragraph 26) provide that in any proceedings on appeal, a party to the appeal may act in person or be represented either by counsel or a solicitor or a consular officer or a person appointed by a voluntary organisation such as the Immigration Appeals Advisory Service which is a body funded by the Central Government or, with the leave of the appellate authority, by any other person. While representation thus is not compulsory, it is in practice recognised to be highly desirable. Positive steps are usually taken in practice to encourage representation so as to secure that the foreigner can understand fully the process and procedures of the appellate body.

The expense to the applicant will depend upon the level of representation which he employs. Legal Aid is not available and accordingly if he employed a counsel or solicitor he would require to pay their fees on the appropriate levels. Representation by one of the voluntary bodies would be given gratuitously. No awards of expenses or costs are made by the appellate authorities but in exceptional cases an ex gratia payment might be made by The Secretary of State in the case of some significant error by his Department.

3. The application does have a suspensive effect. This is provided by the Immigration (Variation of Leave) Order 1976 (SI 1976 N° 1572) paragraph 3 of which (as amended by SI 1989 N° 1005) secures that a person who had applied for a variation of his limited leave to enter the UK before the expiry of that period shall have his period of leave extended at least for a period of 28 days after the date of the decision on his application. While this statutory provision applies strictly to appeals taken under the statutory machinery there is, broadly speaking, an analogous administrative practice where the foreigner has made an application to the ordinary courts for judicial review.

4. Since the Convention on Human Rights is not part of the domestic law of the UK, its provisions are not in general directly applied by the appeal body ; although there is increasing recognition that the Convention's principles are reflected in British Law. Where the appellant is not a citizen of the European Community, there is no statutory right which he can invoke to lead a normal family life.

5. Neither the appellate bodies nor the Judge in the case of judicial review have an express power to censure an administrative authority, but each are able in the course of giving their decision to express their view on the acts or decisions which have been the subject of challenge before them, and often do so.

The Adjudicator and the Immigration Appeals Tribunal must form their own appreciation of the bona fide nature or otherwise of the marriage. Where the matter is brought to the ordinary court by way of judicial review, that court is concerned primarily with the legal validity of the actions and decisions of the subordinate body. It would not be usual for a Judge in a matter of judicial review to enter upon the substance or merits of a particular application.

The Immigration Appeal Tribunal may remit a case to an adjudicator for determination by him (under Rule 21 of the 1984 Procedure Rules SI 1984 N° 2041). Similarly if the case has been taken to the ordinary Court of Appeal, that court can remit it for decision back to the adjudicator or the Appeal Tribunal. Where the matter is successfully challenged by judicial review, the substantial issue will in effect be remitted to the lower appellate bodies or to The Secretary of State to determine.

6. It is expressly provided by Section 19(3) of the Immigration Act 1971 that where an appeal is allowed, the Adjudicator shall give directions for giving effect to that decision and that it will be the duty of the Secretary of State and of any officer to whom directions are given under that subsection to comply with them. The administrative authorities accordingly are bound by statute in such a case to issue a resident's permit. A similar provision applies where the appeal has been allowed by an Appeal Tribunal (Section 19(4)). While the ordinary court would have power to declare the obligation on the Secretary of State to comply with a decision overturning his ruling, this is in practice unnecessary.

## **SECOND CASE**

It should be noted at the outset in relation to this case that the law in the UK has very recently undergone certain changes by virtue of The Asylum and Immigration Appeals Act 1993. Under this new legislation a new official has been created, described as a "Special Adjudicator", to deal at first instance with appeals against deportation orders in cases where asylum is sought and the Convention relating to the Status of

Refugees and the Protocol to that Convention are in issue. Generally, appeals under this recent legislation may be taken to the Adjudicator and thence to the Immigration Appeal Tribunal, and from there to the Court of Session in Scotland or the Court of Appeal in England or Northern Ireland ; but where under Schedule 2 paragraph 5 of the 1993 Act, The Secretary of State certifies that the applicant's claim that his removal would breach the UK's Convention obligations is without foundation, and the adjudicator agrees, there is no appeal to the Immigration Appeals Tribunal, and the applicant's only recourse is to seek judicial review of the Adjudicator's decision.

1. Accordingly the competent jurisdictions for appeal are in the first instance a special adjudicator and thereafter the Immigration Appeal Tribunal and thereafter the ordinary court. If a ground for challenge arose which could not be explored through the statutory procedure for appeal, then the way might lie open to judicial review before the ordinary court to challenge the acting or decision complained of.

It may be noted that since the alien in question has been in residence for 7 years, he is not subject to the restrictions on his right of appeal against deportation which might otherwise have applied (Section 5(1) of the Immigration Act 1988 and paragraph 2 of the Immigration (Restricted Right of Appeal against deportation) (Exemption) (N° 2) Order 1988 SI 1988 N° 1203).

2. As was explained in the first case, representation in the present context would be permitted but not compulsory. The recent procedure rules for appeals in cases such as the present (SI 1993 N°1661) expressly carry through Rule 26 of the 1984 Rules to the new statutory machinery (Rule 22(3) of the 1993 Rules).

The alien's request must be presented in the English language but he has the right to the services of an interpreter. The matter is not one of express statutory regulation except insofar as the control of procedure is entrusted to the Adjudicator. It is a matter of fairness that the practice of requiring an interpreter is established.

The observations regarding costs in relation to the first case also apply here.

3. The application has suspensive effect. This is achieved by express statutory provision (Asylum and Immigration Appeals Act 1993 Schedule 2 paragraph 9 and the Immigration (Variation of Leave)(Amendment) Order 1993 SI 1993 N° 1657).

4. If the residence permit which the alien previously held as a student has expired, he has no right to any provisional residence permit or any provisional work permit. His status is one of an alien subject to a deportation order whose effect is temporarily suspended. Provisional permits to reside or to work are in practice not granted in the UK.

5. In considering whether or not to refuse the appeal against deportation order, both the adjudicator and the Appeal Tribunal would require to look at all the circumstances of the case. Among these circumstances could be the situation pertaining to the country of origin, or another country in which the alien had previously resided, as well as the repeated or manifestly dilatory nature of the alien's request. A failure to take account of any such considerations where they were relevant to the case would be a good ground for quashing the decision in the course of an application for judicial review (e.g. *Bugdaycay* [1987] 1 AC 514). In relation in particular to the matter of delay, reference might be made to Rule 180G(a) of the Changes in Rules of 1993 (House of Commons Paper N° 725) which specifies as a matter which might damage an asylum applicant's credibility if no reasonable explanation is given, that the applicant has failed to apply forthwith upon arrival in the UK unless his application is founded on events which have taken place since his arrival.

6. The situation pertaining in the country of destination is a relevant consideration of which account should be taken in making the decision to deport. It is strictly the decision to deport rather than the deportation order which should be the subject of challenge and judicial review would apply if such a relevant consideration had not been taken into account in arriving at the decision to deport.

In general, it is important to notice that under UK law, The Secretary of State in the first instance, and the appellate authority after him, are bound to consider the merits of an asylum claim (however late it is brought) unless it is one where The Secretary of State proposes to remove the applicant to a third country from which he has recently come, where it is judged that he will be safe from persecution on the footing that that country will itself decide the applicant's rights in accordance with its duties under the Refugees Convention.

7. The matter raised in this question will have a direct bearing on the credibility of the alien's appeal and will make it all the more difficult for him to establish that he has good reason for challenging the deportation order. Loss of documents is expressly included in Rule 180G of the Immigration Rules (725) as a consideration which may damage an asylum applicant's credibility. It cannot be said precisely what the consequence in a particular case might be of the refusals to provide information which are mentioned in the question, but if all such vital information was withheld it would be very unlikely that his appeal would succeed.