IMMIGRATION AND PROTECTION TRIBUNAL

Rōpū Take Manene, Take Whakamaru

PRACTICE NOTE 4/2023

(DEPORTATION – NON-RESIDENT)

1 July 2023

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PREAMBLE

This Practice Note is issued pursuant to section 220(2)(a) of the Immigration Act 2009 ("the Act"). It is effective for all appeals by non-residents who are liable for deportation, that is, all "deportation (non-resident) appeals". Such appeals relate to persons:

(a) unlawfully in New Zealand;

(b) holding a temporary visa granted in error;

(c) holding a temporary visa under a false identity;

(d) holding a temporary visa whom the Minister has determined there is sufficient reason to deport and who has been served with a deportation liability notice;

(e) who are non-residents and non-citizens, whose refugee or protected person status has been cancelled under section 146 of the Act; or

(f) refugee and protection appellants who have also lodged a deportation (non-resident) appeal.

The following information on the practice and procedure adopted by the Immigration and Protection Tribunal ("the Tribunal") is designed to provide guidance to members of the legal profession, licensed immigration advisers and those who are representing themselves before the Tribunal. The Tribunal expects compliance with the procedures set out.

Deportation (non-resident) appeals are normally decided by the Tribunal "on the papers" (that is to say, without an oral hearing).

The practice and procedure of the Tribunal is subject to the Act and Regulations made under it — section 220(2)(a). References in this Practice Note to the "Schedule" are to Schedule 2 of the Act. Reference to the "Regulations" are to the Immigration and Protection Tribunal Regulations 2010. Any inconsistency between the Practice Note and the Act or the Regulations is to be determined in accordance with the Act and the Regulations.

In this Practice Note:

- “**appellant**” means the appellant or appellants and includes a minor included in their parent’s appeal;
- “**chief executive**” means the chief executive of the Ministry of Business, Innovation and Employment;
- “**deportation (non-resident) appeal**” means an appeal against deportation liability by a person who is not a New Zealand resident or citizen;
- “**fraud or the like**” means fraud, forgery, false or misleading representation, or concealment of relevant information;
- “**humanitarian appeal**” means a deportation (non-resident) appeal brought on humanitarian grounds;
- “**member**” means “members” where appropriate;
- “**Minister**” means Minister of Immigration;
- “**Ministry**” means the Ministry of Business, Innovation and Employment, within which Immigration New Zealand operates; and
- “**respondent**” means the Minister, the Ministry, Immigration New Zealand or an immigration officer, as appropriate to the context.

1. COMMENCEMENT

[1.1] This Practice Note takes effect from 1 July 2023 and replaces Practice Note 4/2019 (31 October 2019).

PRELIMINARY MATTERS

2. JURISDICTION

[2.1] The Tribunal is an independent, specialist judicial body established under section 217 of the Act.

[2.2] The functions of the Tribunal, in relation to humanitarian appeals, are to determine appeals against liability for deportation:

(a) by persons unlawfully in New Zealand, on humanitarian grounds — section 154(1) and (2); and

(b) where a temporary visa or an interim visa was granted in error, on humanitarian grounds — section 155(4)(b);

(c) where a temporary visa or interim visa is held under a false identity, on humanitarian grounds — section 156(2)(a);

(d) where the Minister determines there is sufficient cause to deport a temporary visa holder, on humanitarian grounds — section 157(4);

(e) where the refugee or protected person status of a non-resident and non-citizen person has been cancelled under section 146:

(i) on humanitarian grounds, if the person has been convicted of an offence where it is established that recognition as a refugee or protected person was acquired by fraud or the like; or

(ii) on humanitarian grounds and on the facts in any other case — section 162(2);

NB: Where a non-resident and non-citizen former refugee or protected person is liable for deportation under section 162, the Tribunal must, in addition to considering any appeal on the facts

or on humanitarian grounds, determine whether the person is currently a refugee or a protected person — section 204.

(f) to determine appeals against liability for deportation on humanitarian grounds by persons who have simultaneously lodged a refugee and protection appeal and who are either:

(i) liable for deportation and entitled to such an appeal; or

(ii) would be entitled to a humanitarian appeal, if he or she became liable for deportation — section 194(6) and, on appeal in relation to a subsequent claim — section 195(7).

[2.3] The grounds for allowing an appeal on the facts are set out in section 202. In summary, the appellant must establish, on the balance of probabilities, that the act or omission on which deportation liability is asserted did not occur (**NB**: Where the act or omission is asserted to be fraud or the like, intent is not an ingredient — see *Pal v Minister of Immigration* [2013] NZHC 2070).

[2.4] The grounds for allowing a humanitarian appeal are set out in section 207. In summary, the Tribunal must allow an appeal where it is satisfied that there are exceptional circumstances of a humanitarian nature that would make it unjust or unduly harsh for the appellant to be deported from New Zealand, and it would not in all the circumstances be contrary to the public interest to allow the appellant to remain in New Zealand — section 207(1).

[2.5] In determining any humanitarian appeal, the Tribunal may:

(a) dismiss the appeal.

(b) dismiss the appeal and, in its absolute discretion, order the reduction, or removal altogether, of the period of prohibition on entry to New Zealand — section 215(1).

NB: A reduction or removal of the period of prohibition remains subject to the repayment of any debt to the Crown for the costs of deportation, unless the Tribunal orders otherwise — sections 215(2) and 180(1).

(c) dismiss the appeal and, if it considers it necessary for the appellant to remain in New Zealand for "the purposes of getting their affairs in order", order:

(i) that deportation be delayed for a period not exceeding 12 months — section 216(1)(a); or

(ii) that a temporary visa, valid for a period not exceeding 12 months, be granted to the appellant — section 216(1)(b).

NB: If a temporary visa is granted, no further right of appeal against deportation liability arises upon its expiry — section 216(2).

(d) allow the appeal and order that an immigration officer take such steps as it considers necessary to give effect to its decision — section 209.

(e) allow the appeal and order an immigration officer to grant the appellant:

(i) a resident visa subject to such conditions as the Tribunal determines — section 210(1)(a); or

NB: 1. In imposing any condition on the grant of a resident visa, the Tribunal must have regard to the reasons why the appellant was able to demonstrate exceptional circumstances of a humanitarian nature or why it was not contrary to the public interest to allow the appellant to remain in New Zealand, whether or not the condition is of a kind authorised by residence instructions — section 210(3).

2. A resident visa may be granted even though the person would normally be prohibited from being granted a visa under section 15 or 16 (essentially, convicted or deported persons and persons who pose a risk to public order, safety or security) — section 210(4).

(ii) a temporary visa for a period not exceeding 12 months, subject to such conditions as the Tribunal determines — section 210(1)(b).

NB: 1. If a temporary visa is granted, no further right of appeal against deportation liability arises as a result of its expiry — section 210(2).

2. A temporary visa may be granted even though the person would normally be prohibited from being granted a visa under

section 15 or 16 (essentially, convicted or deported persons and persons who pose a risk to public order, safety or security) — section 210(4).

[2.6] If the Tribunal allows an appeal, the appellant's deportation liability is cancelled and:

(a) if the appellant is in custody under the Act, he or she must be immediately released — section 211(2);

(b) if the appellant is subject to residence or reporting requirements under section 315 of the Act, he or she ceases to be subject to those requirements — section 211(3); or

(c) if the appellant has been released on conditions under section 320, the appellant ceases to be subject to those conditions — section 211(4).

[2.7] The procedures of the Tribunal are as it sees fit, subject to the Act and Regulations — section 222(4). The proceedings of the Tribunal in any particular case may be, as the Tribunal thinks fit, of an inquisitorial, adversarial or mixed nature — section 218. In relation to humanitarian appeals, the Tribunal normally proceeds in an inquisitorial manner, although the appellant retains a statutory responsibility to establish their case and to ensure that all information, evidence or submissions they wish to have considered are provided to the Tribunal — section 226(1).

[2.8] Subject to the right of appeal to the High Court on a question of law (see section 245), or judicial review, the decision of the Tribunal on an appeal is final. Except where a court otherwise directs, the Tribunal has no jurisdiction to reconsider an appeal after the appellant has been notified of the decision before it makes its decision on the appeal or matter — clause 17(6), Schedule 2.

3. NOTICE OF APPEAL

[3.1] An appeal must be brought:

(a) In the case of a person unlawfully in New Zealand, not later than 42 days after the day on which the person became unlawfully in New Zealand — section 154(2).

(b) In the case of a person unlawfully in New Zealand following an unsuccessful reconsideration of the decline of their visa application, not later than 42 days after the later of:

(i) the day on which the person became unlawfully in New Zealand — section 154(4)(a); or

(ii) the day on which the person received confirmation of the decision to decline their visa application — section 154(4)(b).

(c) In the case of a person holding a temporary visa granted in error, not later than 28 days after the date of service of a deportation liability notice — section 155(4).

(d) In the case of a person holding a temporary visa under a false identity, not later than 42 days after first becoming unlawfully in New Zealand — section 156(2)(a). Such a person is deemed to have been unlawfully in New Zealand since:

(i) the date the person arrived in New Zealand, if they have held a visa in a false identity since that date — section 156(4)(a); or

(ii) the day after the date on which a visa granted in the person's actual identity expired, or was cancelled without another visa being granted, if they have held a visa in their actual identity after arriving in New Zealand — section 156(4)(b).

(e) In the case of a person holding a temporary visa for whom the Minister has determined there is sufficient reason to deport, not later than 28 days after the date of service of a deportation liability notice — section 157(4).

(f) In the case of a person lodging a refugee and protection appeal, the date on which that appeal was lodged — section 194(6).

[3.2] Where deportation liability arises from service of a deportation liability notice (or notice being given by Immigration New Zealand of confirmation of the decision to decline their visa application on an application for reconsideration) and extrinsic evidence establishes when that occurred, the time for appeal runs from that date — see *Rao v Minister of Immigration* [2015] NZHC 2669. Where service occurred, or notice was given:

(a) by registered letter or courier, the time for appeal runs from delivery

of the deportation liability notice to the person's contact address; or

(b) by email, the time for appeal runs from delivery of the deportation liability notice to the recipient's server — see *LJ (Skilled Migrant)* [2018] NZIPT 204512.

If there is no extrinsic evidence of delivery, it is deemed to have been received by the appellant 3 working days after the date on which it was sent (if sent by email), or 7 days after the date on which it was sent (if sent by registered letter or courier to an address in New Zealand), or 14 days after the date on which it was sent (if sent by registered letter or courier to an address outside New Zealand) — section 386A(4) and (5).

[3.3] The Tribunal does not have jurisdiction to accept an appeal out of time. The Tribunal's staff cannot calculate the time for lodgement of an appeal for intending appellants. Intending appellants are responsible for making any such calculation for themselves. Any intending appellant should consult section 6 of the Act, which addresses how periods of time are calculated.

[3.4] An appeal (and the filing fee) may be filed in person, or by post or courier, or electronically. If filed in person, the filing fee may be paid at the counter by cash, EFTPOS or by payment to the Courts of New Zealand 'file and pay' website (note that Internet Explorer will not access this website). If filed electronically, the filing fee must be paid to the 'file and pay' website. A notice of appeal must be received by the Tribunal within the time limit. It is not sufficient to have put it in the post or to have given it to a courier by that date.

[3.5] The notice of appeal must be on the approved form — section 381, regulations 4(1)(a) and 8(1)(a). The form may be obtained from the Tribunal and from the Tribunal's website. It must be completed in English, signed by the appellant and accompanied by any prescribed fee — regulations 4(1) and 15. The Tribunal has no ability to accept an appeal as validly lodged without payment of the prescribed fee (**NB**: the fee is **not** refundable, unless the appeal has accompanied a refugee and protection appeal and is being dispensed with under section 194(6)(a)).

[3.6] The notice of appeal and the fee should be accompanied by:

(a) any deportation liability notice served on the appellant (if one was served);

(b) two copies of any submissions the appellant wishes to make; and

(c) two copies of any further information the appellant wishes to file.

[3.7] An appeal must be filed with the Tribunal in Auckland in one of the following ways:

in person or by courier, deliver to:

Immigration and Protection Tribunal
Specialist Courts and Tribunals Centre
Level 1, 41 Federal Street
Auckland 1010 (Monday to Friday between 8:30am and 4.30pm)

by post to:

Immigration and Protection Tribunal
EX 11086
Auckland 1010
New Zealand

or by email to:

IPT@justice.govt.nz (the original, hard copies must follow).

If delivering by courier or sending by post, the sender must allow enough time for the appeal documents to reach the Tribunal within the time for lodgement. It is the sender's responsibility to ensure that an appeal is received by the Tribunal in time.

4. REPRESENTATION

[4.1] An appellant may represent themselves or be represented by a lawyer or licensed immigration adviser or person exempt from licensing under the Immigration Advisers Licensing Act 2007, either at their own expense or, if they qualify, on legal aid — clause 13, Schedule 2. A person acting in an informal capacity (as defined in the Immigration Advisers Licensing Act 2007) must not receive any money or gift or other remuneration in kind in exchange for assisting the appellant/their family with their appeal (section 11(a) of that Act). Where an appeal is filed by a person who does not come within the categories recognised by the Immigration Advisers Licensing Act 2007, the Tribunal is unable to accept the appeal — see section 9 of that Act.

[4.2] Where proceedings before the Tribunal relate to a minor (a person under 18 years of age who is not married or in a civil union), the minor's interests are to be represented by the minor's parent and the parent is the responsible adult for the minor for the purposes of the proceedings — section 375(1). In the absence of a

parent (including where a parent cannot perform the role because of a conflict of interest), the Tribunal will nominate a responsible adult — section 375(3). Before doing so, the Tribunal will, where practicable, consult the minor, any representative and adult relatives of the minor known to the Tribunal.

5. CONTACT ADDRESS

[5.1] The appellant must provide the Tribunal with a contact address and an address for service — sections 225(2)(a), 387 and 387A. **The contact address must be a postal address (not a Post Office box) and/or an email address**. If the person's contact address is, or includes, an email address, the person is taken to have agreed to receive all notices and documents at that address — section 387A(5).

[5.2] The appellant may change their contact address at any time, by giving notice in writing to the Tribunal — section 387A(6).

[5.3] The appellant must notify the Tribunal in a timely manner of a change in either of those addresses — section 225(2)(b).

[5.4] If a person is in custody or is required to reside at a particular address, the person's contact address is the postal address of the place where the person is detained or required to reside — section 387A(4).

[5.5] Any notice or other document required to be served must comply with the provisions of sections 386A to 387A, as relevant — section 387B. This is unless any other sections of the Act or any regulations provide for specific situations or circumstances that deal with the manner of service or giving of notices — section 387B.

[5.6] A summons to a witness must be served by personal service at least 24 hours before the attendance of the witness — clause 12, Schedule 2.

[5.7] Any documents relating to proceedings may be served outside New Zealand by leave of the Tribunal and in accordance with the regulations — clause 14, Schedule 2 and regulation 10.

6. DEPORTATION (NON-RESIDENT) APPEALS LODGED WITH REFUGEE AND PROTECTION APPEALS

[6.1] This section should be read in conjunction with Practice Note 2/2023 (Refugee and Protection).

[6.2] A person who lodges a refugee and protection appeal may also lodge a humanitarian appeal if they:

(a) are liable for deportation and entitled to a humanitarian appeal in respect of that liability; or

(b) would be entitled to a humanitarian appeal if they became liable for deportation — section 194(5).

NB: There are mirror provisions for appeals on subsequent refugee claims — section 195(7).

[6.3] The person must lodge the humanitarian appeal at the same time as the refugee and protection appeal (that is to say, within 5 working days of notification of the Refugee Status Unit decision, if the appellant is in custody; or 10 working days, if not) — section 194(2) and (6); or section 195(3) and (7).

[6.4] Where a person lodges such a humanitarian appeal, the Tribunal will consider the refugee and protection appeal first.

[6.5] In the case of a humanitarian appeal under section 194(6) or 195(7), all submissions and evidence should be lodged within 14 days of the lodgement of the appeal. This is in order that the Tribunal is fully informed when considering its absolute discretion to provide an oral hearing.

[6.6] If the person is:

(a) Successful on the refugee and protection appeal, the humanitarian appeal will be dispensed with — section 194(6)(a) or 195(7)(a).

(b) Unsuccessful on the refugee and protection appeal, the Tribunal must consider the humanitarian appeal — section 194(6)(b) or 195(7)(b) (in such a case, the Tribunal will normally allow 14 days for any additional submissions or documents relevant to the humanitarian appeal, when the person is notified that the refugee and protection appeal is dismissed).

[6.7] The humanitarian appeal may be considered by the same member of the Tribunal who heard the refugee and protection appeal or by a different member. Allocation of appeals to members is a matter of the Chair's discretion — section 220(2)(c).

[6.8] If the appellant does not lodge a humanitarian appeal at the same time as the refugee and protection appeal, they are not entitled to a humanitarian appeal later, whether the liability currently exists or may arise in the future — sections 194(7) and 195(8). If, however, a fresh ground of deportation liability arises, a further humanitarian appeal may be lodged — see *DZ (Sri Lanka)* [2017] NZIPT 502646, 502661 and 502900.

[6.9] If the person withdraws their refugee and protection appeal before it is determined, and:

(a) If eligibility to lodge a humanitarian appeal arose under section 194(5)(a) or 195(6)(a) and if the person was, at the time of lodgement, entitled to lodge a humanitarian appeal under some other provision of the Act, then the Tribunal will continue to have jurisdiction to consider the humanitarian appeal.

(b) If eligibility to lodge a humanitarian appeal arose under section 194(5)(b) or 195(6)(b), the Tribunal will have no jurisdiction to consider the appeal. They may, however, be entitled to lodge a humanitarian appeal at a later date, in the normal manner and subject to the relevant statutory requirements — see *AN (Sri Lanka)* [2012] NZIPT 500590 (in respect of first appeals) and *AJ (South Africa)* [2012] NZIPT 500298 (in respect of subsequent appeals).

[6.10] A person, who was not eligible to lodge a humanitarian appeal under section 194(6) or 195(7), is sometimes given a temporary visa at a later date by Immigration New Zealand. That late-acquired lawful status does not then give rise to a right at that time to lodge a humanitarian appeal under section 194(6) or 195(7) — see *AD (Pakistan)* [2011] NZIPT 500644. The right to later lodge a humanitarian appeal under section 154, after becoming unlawfully in New Zealand, is not affected.

[6.11] A person who has already had a humanitarian appeal under section 194(6) or 195(7) determined (or who was eligible to lodge such an appeal, but did not), may lodge a further humanitarian appeal only if the eligibility to do so arises from a fresh or different instance of deportation liability — see *DZ (Sri Lanka*) [2017] NZIPT 502646, 502661 and 502900.

Examples:[1]

Lawful →				Unlawful →				
Refugee and Hum 1 lodged (eligible because lawful)	Refugee declined	Hum 1 declined			Hum 2 lodged			No jurisdiction to accept Hum 2

Lawful →				Unlawful →				
Refugee lodged (eligible because lawful but did not lodge a Hum)	Refugee declined				Hum lodged			No jurisdiction to accept Hum

Unlawful →								
Refugee and Hum 1 lodged (eligible because became unlawful within 42 days)	Refugee declined	Hum 1 declined			Hum 2 lodged			No jurisdiction to accept Hum 2

Unlawful →								
Refugee lodged (eligible because within 42 days but did not lodge a Hum)	Refugee declined				Hum lodged			No jurisdiction to accept Hum

Unlawful →								
Refugee lodged (not eligible to lodge Hum as became unlawful more than 42 days ago)	Refugee declined				Hum lodged			No jurisdiction to accept Hum

Unlawful →				Lawful →				
Refugee lodged (not eligible to lodge Hum as became unlawful more than 42 days ago)	Refugee declined			Temp visa granted	Hum lodged			No jurisdiction to accept Hum <u>at this time</u> - *AD (Pakistan)*

Unlawful →				Lawful →		Unlawful →		
Refugee lodged (no Hum - not eligible as became unlawful more than 42 days ago)	Refugee declined			Temp visa granted		Hum lodged		Jurisdiction to accept Hum (if within 42 days of becoming unlawful) - *AD (Pakistan)*

Lawful →				Unlawful→	Lawful →	Unlawful →		
Refugee and Hum 1 lodged (eligible because lawful)	Refugee declined	Hum 1 declined			Temp visa granted	Hum 2 lodged		Jurisdiction to accept Hum 2 (if within 42 days of becoming unlawful again) - *DZ (Sri Lanka)*

Unlawful →					Lawful →	Unlawful →		
Refugee and Hum 1 lodged (eligible because became unlawful within 42 days)	Refugee declined	Hum 1 declined			Temp visa granted	Hum 2 lodged		Jurisdiction to accept Hum 2 (if within 42 days of becoming unlawful again) - *DZ (Sri Lanka)*

[1] In this table, "temp visa" means "temporary visa", "refugee" means "refugee and protection appeal" and "hum" means "humanitarian appeal".

7. FAMILY APPEALS AND CHILDREN

[7.1] In the case of a person unlawfully in New Zealand, a humanitarian appeal may include any of the appellant's dependent children, if:

(a) the child's liability for deportation is linked or connected to that of the principal appellant and arises from the same facts or circumstances as those of the principal appellant — regulation 7(1); and

(b) the child is also unlawfully in New Zealand and is entitled to lodge a humanitarian appeal.

NB: A dependent child is a child under 18 years of age who is not married or in a civil union and who is dependent on that person, whether or not the child is a child of that person — section 4.

[7.2] In the case of a temporary visa holder who has been served with a deportation liability notice, separate appeals must be lodged by any of the appellant's dependent children who have also been served with a deportation liability notice. However, if a child's liability for deportation is linked or connected to that of the principal appellant and arises from the same facts or circumstances as those of the principal appellant, then only one filing fee is payable.

[7.3] A humanitarian appeal may not include the appellant's spouse or partner or any children who are not dependent children as defined by section 4 of the Act. Those persons must file separate appeals and a separate fee is required for each such appeal — regulation 76(1).

[7.4] If a notice of appeal relates to more than one person:

(a) the principal appellant must sign the notice of appeal; and

(b) the appeal will be treated as an appeal by all the persons specified in the notice of appeal, unless the principal appellant states otherwise in that notice — regulation 7(2).

[7.5] Where two or more members from the same family each lodge an appeal and the claims relate to substantially the same set of circumstances, the Chair of the Tribunal may direct that the appeals be determined by the same member and/or that they be determined together — section 223(2) and (3).

[7.6] Where multiple family members have appeals pending, they should advise the Tribunal as early as possible of any objections they may have to the appeals being considered together.

8. TIME FOR FILING SUBMISSIONS AND EVIDENCE

[8.1] Unless varied by the Tribunal on application, all submissions and evidence must be in writing and be lodged within 21 days after the expiry of the relevant time period for lodgement of the appeal. This is in order that:

(a) the Tribunal is fully informed when considering its absolute discretion to provide an oral hearing — section 233(2); and

(b) the Tribunal is able to consider and determine the appeal expeditiously — section 223(1).

[8.2] After the expiry of the relevant time period for filing submissions and evidence, unless the Tribunal has expressly given a different time limit, it has no obligation to delay making a decision to enable submissions or evidence to be lodged. Where they are not lodged within the allowed time limit, the appellant runs the risk of the Tribunal determining the appeal before the submissions and evidence are lodged. Where submissions are delayed, the Tribunal expects to be notified of this, the reason for the delay and when they can be expected.

9. SUBMISSIONS AND EVIDENCE

[9.1] As a general rule, the Tribunal may receive as evidence any document, information or matter that in its opinion may assist it, whether or not it would be admissible in a court of law and, subject to certain exceptions, the Evidence Act 2006 applies as if the Tribunal was a court — clause 8, Schedule 2.

9A. SUBMISSIONS AND EVIDENCE PROVIDED BY THE APPELLANT

[9A.1] It is the responsibility of an appellant to establish their case or claim and to ensure that all submissions and evidence are provided to the Tribunal before it makes its decision — section 226(1).

[9A.2] All statements must be signed and dated. Documentary evidence should be provided in an indexed, tabulated bundle.

[9A.3] Two hard copies of all submissions, documents and other evidence must be filed. Submissions may be provided via email, however two hard copies must then be delivered or posted to the Tribunal shortly thereafter and received by the Tribunal within three working days.

[9A.4] Supporting information and evidence should be provided in the following format:

(a) a table of contents, which includes the date of each document; a title or short description; a reference (tab or page number) indicating where it can be located; and whether it is new information, or was previously provided to Immigration New Zealand (in which case, it need not be provided again); and

(b) the documents to which the contents page refers, with tab or page numbering, for example:

Table of Contents			
Page/Tab number	Date	Title/Description	New or previously provided to Immigration New Zealand
Tab 1	29/02/2023	Medical records from White Cross Medical Centre	New
Tab 2	12/03/2023	Letter from Ms Smith, appellant's Employer	New

[9A.5] The Tribunal does not require parties to provide copies of its own decisions or New Zealand court authorities on established jurisprudence. It does require a hard copy of foreign court decisions and New Zealand court authorities on novel points of law.

[9A.6] All written evidence which is not in English must be accompanied by an accurate translation by a competent and independent translator — regulation 11.

[9A.7] Where internet-sourced material is relied on, printed copies, including the URL, must be provided. A functioning hyperlink to the documents should be included in the contents page. Where hyperlinks to material have been provided to the Refugee Status Unit or Immigration New Zealand, it will be necessary to provide fresh hyperlinks to the Tribunal.

[9A.8] Where an appellant seeks to adduce evidence in electronic format, they are normally expected to provide such information on a CD or DVD, and to provide a written explanation of its contents, and should check with the Tribunal in advance as to the compatibility of the file type and format with the Tribunal's systems. If a CD or DVD cannot be provided, the appellant should check with the Tribunal as to alternatives. Flash drives are not able to be accepted by the Tribunal.

9B. EVIDENCE GATHERED BY THE TRIBUNAL

[9B.1] The Tribunal may seek information from any source, but it is not obliged to do so, and it may determine the appeal or matter on the basis of the information provided — section 228.

[9B.2] The Tribunal, or any person authorised by it, may:

(a) inspect any papers, documents, records or things; and

(b) require any person to produce any documents or things in that person's possession or control and allow copies to be made; and

(c) require a person to provide, in an approved form, any information specified and copies of any documents — clause 10, Schedule 2; and

(d) require the appellant to allow biometric information to be collected from them — section 232.

9C. SUBMISSIONS AND EVIDENCE PROVIDED BY THE RESPONDENT

[9C.1] The Minister or chief executive may also, in the time allowed by the Tribunal, lodge with the Tribunal any other evidence or submissions — section 226(3).

[9C.2] Where an appeal is lodged, the chief executive must, in the time allowed by the Tribunal, lodge with the Tribunal any relevant files — section 226(2)(b). The relevant files may include any relevant temporary and/or resident visa file and records and relevant electronic notes held by Immigration New Zealand concerning the appellant, where they are disclosable.

[9C.3] If the Tribunal requires other files or documents, including those held in the name of other family members, it may seek such files or documents from the chief executive. While the Tribunal may require the chief executive to seek and provide information, no party may request the Tribunal to exercise this power — section 229.

[9C.4] As it determines appropriate, the Tribunal may also seek submissions from the chief executive. When it does so, it will inform the appellant and provide copies of the chief executive's submissions for comment — section 226(3).

10. SPECIAL NEEDS OF APPELLANTS

[10.1] The Tribunal endeavours to accommodate the special needs of appellants, such as those with a disability, and expects to receive advance notice of any such needs.

11. OFFICIAL INFORMATION ACT AND PRIVACY ACT REQUESTS

[11.1] In relation to its judicial functions, the Tribunal is not subject to the provisions of:

(a) the Official Information Act 1982 — section 2(6)(b) of that Act; or

(b) the Privacy Act 2020 — sections 4(1)(a), 7(1) and 8(a)(iv) of that Act.

[11.2] Where an appellant wishes to obtain access to documents in relation to a deportation non-resident appeal, such a request is appropriately made to Immigration New Zealand as copies of all relevant documents which were before the Tribunal are included in the Immigration New Zealand file.

12. WITHDRAWAL OF APPEAL

[12.1] A humanitarian appeal may be withdrawn by the appellant at any time — section 238(1). Notice of withdrawal should be in writing and signed by the appellant — regulation 9. A form for this purpose may be obtained from the Tribunal or the Tribunal's website, or an appellant can write (and sign) a letter indicating withdrawal of their appeal. The filing fee will not be refunded.

[12.2] Following a withdrawal, the person may be served with a deportation order and the person's deportation may be executed — section 238(3).

[12.3] A humanitarian appeal is deemed to be withdrawn when the person leaves New Zealand — section 239(1). In determining whether a person has left New Zealand, the Tribunal may rely on a certificate made under section 366(2)(17) — section 239(3). Appellants are strongly recommended to obtain legal advice before leaving the country while liable for deportation.

[12.4] If an appeal is withdrawn (or deemed to be withdrawn), the decision appealed against stands — section 238(4).

STEPS PENDING DETERMINATION

13. TIME LIMITS SET BY THE TRIBUNAL

[13.1] Where the Tribunal allows time for the filing of any submissions, documents or other evidence, any request for an extension of the time allowed must be made in writing, within the period of time allowed, and must provide cogent reasons for the extension sought. An indication of the time within which the outstanding matter will be completed must also be given, with supporting documentation where that is readily available.

14. DISCRETION TO GRANT ORAL HEARINGS

[14.1] The Tribunal normally determines a humanitarian appeal on the papers — section 234(2). However, it has an absolute discretion to provide an oral hearing, if it determines to do so — section 233(2).

[14.2] If the Tribunal exercises its absolute discretion to provide an oral hearing, the procedures set out in Practice Note 1/2023 will apply, with any necessary modifications.

15. MULTIPLE APPEALS BY ONE PERSON

[15.1] Where a person has more than one appeal with the Tribunal (whether at the same time or at different times), they must inform the Tribunal at the earliest opportunity.

16. POWER TO ISSUE A SUMMONS

[16.1] While humanitarian appeals are normally determined on the papers, and there is therefore no need for a witness to be summonsed, the Tribunal may, either of its own motion or on application, issue in writing a summons requiring any person to give evidence by statement, and to produce any relevant papers, documents, records or things in that person's possession or control — clause 11, Schedule 2.

[16.2] An application for the issue of a witness summons must be in writing and supported by submissions as to the nature of the evidence intended to be given, its

relevance to the appeal, and any communications which have already occurred with the intended witness. The Tribunal must also be provided with the full name, residential and work address, and other relevant details of the person sought to be summonsed. Where it is intended that the witness produce any papers, documents, records or things in their possession or control, full particulars must also be given.

[16.3] A witness under a summons is entitled to be paid witnesses' fees, allowances and expenses in accordance with the scales prescribed by regulations under the Criminal Procedure Act 2011 — clause 16(1), Schedule 2. The relevant regulations are the Witnesses and Interpreters Fees Regulations 1974. The person requiring the attendance must pay or tender the fees, allowances and expenses at the time the summons is served, or at some other reasonable time before the hearing — clause 16(2), Schedule 2.

[16.4] As the Tribunal is under a duty to act fairly, it may, in appropriate cases, direct that the intended witness be heard on the application for the witness summons.

[16.5] The Tribunal has a duty to prevent the abuse of its own processes, therefore it will refuse to issue or will set aside a summons where it is satisfied that it is proper to do so. Without limiting the circumstances, the Tribunal will do so where it is not established that the intended witness is able to give relevant and probative evidence, where there has been an abuse of process, where the summons was irregularly obtained or issued, or where the summons was taken out for a collateral motive or is oppressive.

DETERMINATION

17. ORDER OF DETERMINATION AND REQUESTS FOR PRIORITY

[17.1] The Chair of the Tribunal may decide the order in which appeals are heard. No decision may be called into question on the basis that the appeal ought to have been heard or decided earlier or later than any other appeal, matter, or category of appeal or matter — section 222(2) and (3).

[17.2] The Tribunal will consider requests that an appeal be considered as a matter of priority. Such a request must be accompanied by full and cogent reasons justifying the request and supported by any relevant evidence. The request should be addressed to the Chair of the Tribunal.

18. ENQUIRIES ABOUT DELIVERY OF DECISION

[18.1] The Tribunal's website provides updated information as to the current estimated timeframe for determining humanitarian appeals: see here. This information is provided to assist appellants in working out broadly when to expect a decision. It is kept as accurate as possible but is subject to exceptions and should be treated as a "best endeavours" guide.

[18.2] From time to time, parties and other persons approach the Tribunal with an enquiry as to the likely date of delivery of a decision. All such requests must be in writing and must set out the appellant's name and the appeal number.

[18.3] The Tribunal will respond to the enquiry in writing. The response will be a "best estimate" only. No information as to outcome will be given.

19. DECISIONS

[19.1] A humanitarian appeal is normally decided by one member of the Tribunal, unless the Chair directs otherwise because of exceptional circumstances — section 221.

[19.2] Where a decision of the Tribunal is made by more than one member, but is not unanimous, the decision of the majority shall prevail — clause 17(1), Schedule 2. If the members are evenly divided, the appeal or matter will be decided in favour of the appellant — clause 17(2), Schedule 2.

[19.3] Every decision of the Tribunal must be given in writing and contain reasons — clause 17(3), Schedule 2.

[19.4] Notice of a decision on a humanitarian appeal may be given by courier (sections 4 and 386A), or by email where the person has designated an email address as their contact address (section 387A). It will be sent by email to a lawyer or agent where the lawyer or agent has signed a memorandum stating that he or she accepts service of the notice or document on behalf of the person — section 386A(2)(b). Where the decision is sent:

(a) by registered letter or courier, notice is given on delivery of the decision to the person's contact address; or

(b) by email, notice is given on delivery of the decision to the recipient's server — see *LJ (Skilled Migrant)* [2018] NZIPT 204512.

[19.5] Decisions of the Tribunal are normally publicly available, unless the Tribunal makes an order prohibiting the publication of the same — clause 18(4), Schedule 2. In such circumstances, a research copy of the Tribunal's decision (with the prohibited part deleted) will be published instead of the full version of the decision released to the parties.

[19.6] Decisions on humanitarian appeals are not normally depersonalised by the Tribunal, although it may decide to do so on its own volition. If a party seeks the research copy of their decision to be depersonalised, or prohibited from publication, they should make a request for the Tribunal to do so and include reasons in their submissions.

[19.7] A decision by the Tribunal is final, once notified to the appellant — clause 17(6), Schedule 2.

[19.8] In certain circumstances, the Tribunal can recall a decision. A correction may be made on application by a party, or on the Tribunal's own motion — clause 20, Schedule 2; see also Part 9 of Practice Note 5/2018. Beyond these limited powers of recall, a decision by the Tribunal is final once notified to the appellant or affected person — clause 17(6), schedule 2.

AFTER THE DECISION

20. RETURN OF DOCUMENTS

[20.1] Normally, the Tribunal will copy and return passports to the appellant, if provided. If a party lodges other important original documents, such as birth certificates, and qualifications, they should advise the Tribunal at the time they lodge them if they wish them to be returned. Original documents on the Immigration New Zealand file will be returned with the file to Immigration New Zealand and appellants should direct any requests for their return to that body.

21. APPEAL TO HIGH COURT AND APPLICATIONS FOR JUDICIAL REVIEW

[21.1] Where any party to an appeal is dissatisfied with the determination of the Tribunal as being erroneous in point of law, he or she may, with the leave of the High Court, appeal to the High Court on that question of law — section 245(1).

[21.2] Where extrinsic evidence establishes when notice was given of the Tribunal's decision (or other document), time for appeal runs from that date — see *Rao v*

Minister of Immigration [2015] NZHC 2669. If there is no such extrinsic evidence, it is deemed to have been received 3 working days after the date on which it was sent (if sent by email), or 7 days after the date on which it was sent (if sent by registered letter or courier to an address in New Zealand) or 14 days after the date on which it was sent (if sent by registered letter or courier to an address outside New Zealand) — section 386A(4).

[21.3] An application to the High Court for leave to appeal must be brought:

(a) not later than 28 days after the date on which the decision of the Tribunal was notified to the party appealing; or

(b) within such further time as the High Court may allow on application made before the expiry of that 28-day period — section 245(2).

[21.4] Any application for judicial review of a decision of the Tribunal must be commenced not later than 28 days after the date on which the person concerned is notified of the decision, unless the High Court decides that, by reason of special circumstances, further time should be allowed or unless leave to commence proceedings is required — sections 247(1), 249(3) and (4).

[21.5] Where a person both appeals against a decision of the Tribunal and brings review proceedings in respect of that same decision:

(a) the person must lodge both together; and

(b) the High Court must endeavour to hear both matters together, unless it considers it impracticable to do so — section 249A.

[21.6] Neither the Tribunal nor its staff can give advice to appellants concerning any appeal to the High Court or application for judicial review. Self-represented appellants are advised to seek legal advice or assistance in that regard.

“Judge M Treadwell”

Judge M Treadwell
Chair
Immigration and Protection Tribunal