

Guide 4 - A guide to making a deportation appeal for non-citizens whose refugee or protected person status has been cancelled

Immigration and Protection Tribunal

Using this guide

This guide will provide you with the information needed to complete your deportation appeal (under sections 201(1)(c) and 206(1)(d) of the Immigration Act 2009) to the Immigration and Protection Tribunal (the Tribunal).

This guide tells you whether you can make an appeal, and how to do it. If you decide to appeal, you must fill out *Form 4 – Notice of Appeal: Deportation Appeal (Cancelled Refugee and/or Protection Status)*. A copy of the form may be downloaded from our website or you can ask the Tribunal for a copy (see the back of this Guide for the contact details).

The Immigration and Protection Tribunal

The Tribunal is an independent body that hears appeals about residence visas, refugee or protected person claims, and deportation. It was set up under the Immigration Act 2009. It is not part of Immigration New Zealand and does not issue visas or deal with anything other than appeals and some applications by Immigration New Zealand.

What is a deportation appeal and can I make one?

If Immigration New Zealand has decided you can be deported because your refugee or protected person status has been cancelled you can appeal to the Tribunal.

There are two types (or grounds) of appeal:

- On humanitarian grounds only. This means you must show the Tribunal that:
 - there are exceptional humanitarian circumstances that would make it unjust or unduly harsh to deport you from New Zealand; and
 - letting you stay in New Zealand would not be against the public interest.

If you appeal on humanitarian grounds, the Tribunal will also consider whether you should be recognised as a refugee or protected person.

See section 207 of the Immigration Act 2009.

- On the facts. This means you think that the deportation decision was wrong because it was based on incorrect facts.

See section 206(1)(d) of the Immigration Act 2009.

Whether you can appeal on humanitarian grounds only, or on humanitarian grounds and the facts depends on the reason why your refugee or protected person status was cancelled. The table below explains this, and also tell you the deadline by which the Tribunal must receive your appeal.

If you are liable for deportation because...	Your grounds for appeal are...	The Tribunal must receive your appeal by...
<p>your refugee or protected person status was cancelled and you have been convicted of a crime, and the Court decided you gained your refugee or protected person status by fraud, forgery, false or misleading representation, or by failing to reveal relevant information.</p> <p>See Section 162(2)(a) of the Immigration Act 2009</p>	on humanitarian grounds only	28 days after you received the Deportation Liability Notice
<p>In any other case in which your refugee or protected person status was cancelled</p> <p>See section 162(2)(b) of the Immigration Act 2009</p>	on humanitarian grounds and on facts	28 days after you received the Deportation Liability Notice

IMPORTANT: When the Tribunal considers your humanitarian appeal, it will also consider whether you are a refugee or a protected person.

See section 204 of the Immigration Act 2009

You must make your appeal using *Form 4 – Notice of Appeal: Deportation (Cancelled Refugee and/or Protection Status)*. A copy of this form may have been sent to you with this Guide. If not, download it from <http://www.justice.govt.nz/tribunals/ipt> or ask the Tribunal for a copy (see the back of this guide for contact details). You must sign your form, and send it to the Tribunal, with your fee and supporting documents.

What can the Tribunal decide?

After it considers your appeal, the Tribunal will decide either to:

- allow your appeal; or
- allow the appeal and suspend your liability for deportation for up to 5 years if you are a resident or permanent resident; or
- decline (turn down) your appeal; or
- decline your appeal, but reduce or remove the period you are prevented from entering New Zealand; or
- decline your appeal, but order Immigration New Zealand to delay your deportation.

See sections 202(f), 204, 209, 212, 215, and 216 of the Immigration Act 2009.

How many days do I have to appeal?

The Tribunal must receive your appeal no more than 28 days after the date you were given a Deportation Liability Notice.

How much will it cost me?

An appeal costs NZ\$700.

Do I need a lawyer or representative if I want to appeal?

You are not required to have a representative: you can represent yourself if you want. If you choose to have a representative, that person must be:

- a lawyer; or
- a licensed immigration adviser (they must be licensed with the New Zealand Immigration Advisers Authority: this includes advisers outside New Zealand); or
- someone who is not a licensed immigration adviser but is allowed to represent you under section 11 of the Immigration Advisers Licensing Act 2007. They can be:
 - a person who provides informal immigration advice only sometimes and is not paid for it (such as a family member); or
 - current members of the New Zealand Parliament and their staff; or
 - foreign diplomats and consular staff; or
 - government employees whose employment agreement allows them to give immigration advice; or
 - staff of community law centres or Citizens Advice Bureau.

These are the only representatives you are allowed to use. If you name someone else as your representative on *Form 4*, the Tribunal will contact you. You will need to find a different representative or represent yourself.

You can find out more about choosing a representative from the Immigration Advisers Authority. See <https://www.iaa.govt.nz/>, or phone them on 0508 422 422. See this guide for information about changing your representative, or deciding to represent yourself, after you have sent in your appeal.

I want a lawyer but I can't afford one. What can I do?

You may be able to get legal aid (government funding), depending on your personal circumstances.

You can find out more about legal aid from the Ministry of Justice (see <https://www.justice.govt.nz/courts/going-to-court/legal-aid/get-legal-aid/>) or from a lawyer.



Can I have an interpreter to help me appeal?

If you need an interpreter to help you fill in the appeal form, you must arrange and pay for this yourself.

At the hearing, the Tribunal will arrange and pay for an interpreter to help you if it decides you need one. You must tell the Tribunal what language and dialect you speak: make sure you fill out Step 2 of *Form 4*.

Can I appeal if I am under 18 years old?

Yes, but a responsible adult must act for you during the appeal. The responsible adult should be one of your parents. If this is impossible (for example, if your parents are not in New Zealand), the Tribunal needs to know so it can appoint a responsible adult to act for you. Tick the relevant box in step 9 of *Form 4*.

This does not apply if you are married and under 18. In that case, you do not need a responsible adult to act for you.

See section 375 of the Immigration Act 2009.

Can I include other people in my appeal?

No. If other members of your family are also being deported, you need to fill out a separate appeal form for each of them. If you send all your family members' appeals together, you will only need to pay one fee.

Will I need to speak to the Tribunal?

Yes. The Tribunal will decide your appeal at an oral hearing which you and your representative (if you have one) must come to. See further on in this guide for more information about the hearing.

What information should I send to the Tribunal?

At the time you send the Tribunal your appeal form, you do not need to send anything else. We will receive a copy of the Refugee Status Branch file, and we will send a copy to you. You must look after this file because you will need to bring it to the hearing.

Once the date of the hearing has been set, the Tribunal will ask you to send any evidence and submissions you want it to consider when it decides your appeal. Your appeal will have a better chance of succeeding if all the supporting documents you send are accurate, relevant and complete. They should be:

- originals or certified copies;
- in English or accompanied by an English translation by a recognised translator;
- signed, if the document contains a statement from a named person.

You must send two copies of all documents.

It is not the Tribunal's job to tell you which documents to send. You must work out what information we need to understand and decide your appeal, and then send that information to us. Send any documents you think show that what you are telling the Tribunal is true.



The Tribunal will usually keep any original documents you send (but not your passport). If you want them back after your appeal has been decided, please write to the Tribunal and ask for them to be returned.

What if things change after I appeal to the Tribunal?

You must tell the Tribunal immediately and in writing if:

- there are changes in your life;
- you change where you live, or want the Tribunal to contact you at a different address from the one on your appeal form;
- you change your representative. You and your new representative must fill out *Form 8 – Authority to Act* (available from www.justice.govt.nz/tribunals/ipt) and send it with your letter;
- you had a representative when you sent in your appeal and now want to represent yourself.

In all these cases, tell us where you want us to send letters and information about your appeal from now on. If you do not do this, the Tribunal will keep sending everything to the address you gave on your appeal form. The Immigration Act 2009 says it is your responsibility to tell the Tribunal about these changes.

Making your appeal – a checklist

- Read this guide carefully.
- Fill out *Form 4 – Notice of Appeal: Cancelled Refugee and/or Protection Status*. You may have been sent the form with this guide. If not, download it from www.justice.govt.nz/tribunals/ipt or get a copy from the Tribunal – see the contact details at the end of this guide.
- Make sure you fill out step 2 of *Form 4* if you think you need an interpreter at the hearing. If the Tribunal decides you need one, it will arrange and pay for an interpreter to help you. You must tell the Tribunal what language and dialect you speak.
- Sign the form at steps 8 and 9.
- Include two copies of any supporting documents.
- Ensure you have paid the fee. To confirm how you pay the application fee, please visit the Ministry of Justice website: www.justice.govt.nz/tribunals/immigration/immigration-and-protection/make-an-appeal/forms-and-fees/
- Deliver or post everything to the Tribunal.

You or a courier can deliver it to:

Immigration and Protection Tribunal
Auckland Tribunals
Level 1 Chorus House
41 Federal Street
Auckland 1010
New Zealand

The Tribunal's offices are usually open 8:30am-4.30pm, Monday-Friday.

Or you can post it to:

Immigration and Protection Tribunal
Auckland Tribunals
DX: EX11086
Auckland
New Zealand

- Make sure the Tribunal receives your appeal by the deadlines explained earlier in this guide. The Tribunal cannot accept late appeals.
- To work out when you must send your appeal:
 - Start by checking the date Immigration New Zealand gave you the Deportation Liability Notice.
 - Then add 28 days. This is the date the Tribunal must receive your appeal by.
 - When you count the 28 days:
 - Include Saturdays and Sundays
 - Don't include the following New Zealand public holidays if they fall on a weekday (Monday to Friday):
 - New Year's Day (1 January)

- Day after New Year’s Day (2 January)
 - Auckland Anniversary Day (usually the Monday closest to 29 January)
 - Waitangi Day (6 February)
 - Provincial Anniversary Day (if you are in New Zealand, the province where you live)
 - Good Friday (Friday before Easter Sunday)
 - Easter Monday (Monday after Easter Sunday)
 - Anzac Day (25 April)
 - Sovereign’s Birthday (first Monday in June)
 - Labour Day (fourth Monday in October)
 - Christmas Day (25 December)
 - Boxing Day (26 December)
 - Don’t include the days from 26 December to 31 December.
- If you think your appeal will not reach the Tribunal in time, you can fax or email us a copy in advance. You must ensure you pay the required NZ\$700 fee. Send the copy of your appeal form to:

Fax: +64 9 914 5263

Email: IPT@justice.govt.nz

After you have sent the fax or email, you still need to deliver or post the original appeal form and your supporting documents to the Tribunal



What happens during the appeal?

An appeal to the Tribunal goes through five stages:

1. Receiving the appeal
2. Preparation
3. Hearing
4. Making the decision
5. After the decision

Receiving the appeal

At this stage, the Tribunal receives your appeal and checks that everything is correct. We make sure that you have used the right form, signed and paid the fee, and that we have received your appeal by the deadline.

If everything is complete and correct, the Tribunal will write to you to let you know that your appeal has been accepted and can now be considered. The Tribunal will also tell Immigration New Zealand that you have made an appeal. You do not need to do anything more at this stage.

If your appeal is not complete and correct, we will return it to you so you can correct it and send it in again if there is still time.

Preparation

The Tribunal lets the Refugee Status Branch know you have made an appeal. They send us a copy of your refugee or protected person claim file and any other relevant material. We will send you a copy of this File. You must look after it because you will need to bring it to the hearing.

Before the hearing, there will be a pre-hearing process to get everything ready. The exact timing is different for every appeal, but it will be in the weeks before the hearing.

During the pre-hearing process, the Tribunal member in charge will talk to you or your representative about what needs to be done and when. Things that will probably be discussed include:

- witnesses: there may be other people who have information that supports your case. If so, they can come to your hearing and talk to the Tribunal.
- other information: the member may discuss with you any extra evidence that may be needed. It is your responsibility to provide this.
- submissions: the pre-hearing process will identify the issues in your case. Before the hearing, you will need to give the Tribunal submissions (written reasons why your appeal should be allowed) about each issue.

We will tell you when you need to do these things.

See the Tribunal's Practice Note 1/2012 (Deportation) for more about the pre-hearing stage.



Hearing

The Tribunal will tell you the date, time and place of your appeal hearing.

You and your representative (if you have one) must come to it. Other people who may take part in the hearing include:

- an interpreter
- any witnesses
- a lawyer for the Minister of Immigration.

You can bring along supporters, but they cannot take part in the hearing. The hearing is not open to the public.

At the hearing, the Tribunal will ask you questions about your appeal. The lawyer for the Minister of Immigration and your representative may also ask you questions. After the Tribunal has heard from you and any witnesses, you can raise anything that has not been talked about so far. The lawyer for the Minister of Immigration can make closing submissions. Then you or your representative can also make closing submissions.

Hearings on the papers

If you do not come to your hearing and do not have a reasonable excuse, the Tribunal may decide your appeal “on the papers”. That means it uses only the documents you and Immigration New Zealand sent the Tribunal.

Withdrawing your appeal

You can withdraw your appeal any time before the Tribunal releases its decision. To withdraw, you must complete *Form 9 – Withdrawal of Appeal* (copies available from the Tribunal or download from www.justice.govt.nz/tribunals/ipt) and send it to the Tribunal OR write a letter to the Tribunal saying you want to withdraw your appeal. You must sign the letter.

If you want to leave New Zealand before the Tribunal decides your appeal, it will consider you have withdrawn it.

If you withdraw your appeal, you will not get back your fee.

Making the decision

After the Tribunal has considered your appeal, it makes its decision. It posts a copy to you, your representative (if you have one) and to Immigration New Zealand or the Minister of Immigration.

The Tribunal publishes its decisions on its website, removing names and other information that would identify you or anyone else.

After the decision

Once the Tribunal makes its decision, it can do nothing more.



If you disagree with the Tribunal's decision, you have the right to ask the High Court for permission to appeal to the High Court on a point of law or to ask the High Court for judicial review – but only if you can show the Tribunal got something wrong. If you are thinking about appealing or asking for judicial review, you should talk to a lawyer first.

- Appeal to the High Court on point of law. Your appeal can only raise legal issues, not questions of fact. You must apply to the High Court for permission to appeal no more than 28 days after you were told of the Tribunal's decision.
- Judicial review by the High Court. If you apply for judicial review, you are asking the High Court to review how the Tribunal carried out its statutory (legal) powers when it decided your appeal. You must apply to the High Court for permission to seek judicial review no more than 28 days after you were told of the Tribunal's decision.

See section 247 of the Immigration Act 2009; and the Judicature Amendment Act 1972

If you do not appeal to the High Court or apply for judicial review within 28 days, the Tribunal's decision becomes final.

Immigration and Protection Tribunal

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Auckland
New Zealand

Address: Level 1 Chorus House , 41 Federal Street, Auckland 1010

Phone: 64 9 914 4299

Email: ipt@justice.govt.nz

Website: www.justice.govt.nz/tribunals/immigration/immigration-and-protection/

