IMMIGRATION AND PROTECTION TRIBUNAL

PRACTICE NOTE 3/2019

(RESIDENCE)

31 October 2019

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(RESIDENCE)

PREAMBLE

PRELIMINARY MATTERS

STEPS PENDING DETERMINATION

DETERMINATION

AFTER THE DECISION

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 relating to residence class visas ("residence appeals"). Such appeals are decided by the Tribunal "on the papers" (that is to say, without an oral hearing).

It is important to clarify at the outset:

(a) There is no right of appeal to the Tribunal in relation to any decision concerning a temporary entry class visa ("temporary visa").

(b) The Tribunal is an independent body, and does not issue temporary visas of any kind. It cannot give advice about temporary visas or any other aspect of immigration processes.

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, immigration advisers and those appearing in person before the Tribunal. The Tribunal expects compliance with the procedures set out.

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 Regulations are to the Immigration and Protection Tribunal Regulations 2010. References to the Schedule are to Schedule 2 of the Act, "Provisions Relating to Tribunal".

Where this Practice Note refers to the Act or the Regulations, readers are expected to consult the section of the Act or regulation referred to, before relying on it. Any inconsistency between the Practice Note and the Act or Regulations is, of course, to be determined in accordance with the Act and the Regulations.

In this Practice Note:

- "**appellant**" means the appellant, applicant or affected person, as relevant;
- "**chief executive**" means the chief executive of the Ministry of Business Innovation and Employment;
- "**member**" means "members" where appropriate;
- "**Ministry**" means the Ministry of Business, Innovation and Employment.

1. COMMENCEMENT

[1.1] This Practice Note takes effect from 31 October 2019 and replaces Practice Note 3/2018 (16 May 2018), which is repealed from that date.

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 residence appeals, are:

(a) to determine appeals against decisions to decline to grant residence class visas (section 217(2)(a)(i)); and

(b) to deal with certain transitional matters arising from the repeal of the Immigration Act 1987 (section 217(2)(c)).

[2.3] The Act provides a right of appeal against a decision concerning a residence class visa in the case of:

(a) A decision of an immigration officer to decline to grant the visa (including where new information would disqualify the person under both the residence instructions applicable at the time of the application and current residence instructions) – (sections 187(1)(a)(i) and 190(2)(b)).

(b) A decision by the Minister not to grant a residence class visa if classified information has been relied on in making the decision – (section 187(1)(a)(ii)).

(c) A decision to cancel the visa under section 65(1) – but only where the person is outside New Zealand – (section 187(1)(b)).

(d) A decision to refuse to grant entry permission to the holder of a resident visa (including where new information would disqualify the person under both the residence instructions applicable at the time of the application and current residence instructions) – (sections 187(1)(c) and 190(2)(b)).

[2.4] There is no right of appeal in the case of:

(a) A decision by the Minister not to grant a residence class visa (unless classified information has been relied on in making the decision) – (section 187(2)(a)).

(b) A refusal to grant a residence class visa or entry permission to an excluded person – (section 187(2)(b)). Excluded persons are those described in sections 15 and 16 of the Act; essentially, convicted or deported persons and persons who pose a risk to public order, safety or security.

(c) A refusal or failure to issue an invitation to apply for a visa – (sections 187(2)(c) and 191).

(d) A refusal to grant a residence class visa to a person invited to apply for a visa, if a ground is that the person:

(i) whether personally or through an agent, in the expression of interest submitted false or misleading information or withheld relevant information that was potentially prejudicial; or

(ii) did not ensure that an immigration officer was informed of any material change in circumstances between expressing interest and the person's application for the visa – (section 187(2)(d)).

(e) A lapse of an application for a residence class visa or of an expression of interest – (section 187(2)(e)).

(f) A revocation of an invitation to apply for a visa – (section 187(2)(f)).

[2.5] The grounds for an appeal are:

(a) the decision was not correct in terms of the residence instructions applicable at the time the application for the visa was made; or

(b) the special circumstances of the appellant are such that consideration of an exception to those residence instructions should be recommended – (section 187(4)).

An appellant may appeal on either, or both, grounds. The Tribunal will only consider (b) if (a) fails. Where an appellant appeals only on (b), the Act requires it to first consider (a) and find that Immigration New Zealand's decision was correct, before it can consider (b).

[2.6] In determining any residence appeal, the Tribunal may:

(a) Confirm the decision appealed against as having been correct in terms of the residence instructions applicable at the time the application was made – (section 188(1)(a)).

(b) Reverse the decision as having been incorrect in terms of the residence instructions applicable at the time the application was made – (section 188(1)(b)).

(c) Note the correctness of the original decision in terms of the residence instructions applicable at the time the application was made on the basis of the information provided to the Minister or the immigration officer before the time of the decision, but reverse that decision on the basis of any information properly made available to the Tribunal that reveals that the grant of the visa would have been correct in terms of the applicable residence instructions – (section 188(1)(c)).

For the purposes of this section, "information properly made available" is information able to be received by the Tribunal under section 189(3)(a), (4) and (5) and section 229. This is explained in more detail at [6A.3](a), [6C.3] and [6C.4] below.

(d) Note the correctness of the original decision in terms of the residence instructions applicable at the time the application was made on the basis of the information provided to the Minister or the immigration officer before the time of the decision, but determine the appeal by cancelling the decision and referring the matter back to the Minister, if he or she made the decision, or the chief executive, in any other case, for consideration under those residence instructions as if a new visa application had been made that included any additional information properly provided to the Tribunal – (section 188(1)(d)).

For the purposes of this section, "information properly provided" is information able to be received by the Tribunal under section 189(3)(a), (4), (5) and (6). This is explained in more detail at [6A.3](a) and (b), [6C.3] and [6C.4] below.

(e) Determine the appeal by cancelling the decision and referring the application back to the Minister, if he or she made the decision, or the chief executive, in any other case, for correct assessment in terms of the applicable residence instructions, where the Tribunal:

(i) considers that the decision appealed against was made on the basis of an incorrect assessment in terms of the residence instructions applicable at the time the application was made; but

(ii) is not satisfied that the appellant would, but for that incorrect assessment, have been entitled in terms of those instructions to the visa or entry permission – (section 188(1)(e));

in which case it may give such directions it thinks fit as to how a correct assessment of the application should be carried out – (section 188(3)).

(f) Confirm the decision as having been correct in terms of the residence instructions applicable at the time the visa application was made, but recommend that the special circumstances of the applicant are such as to warrant consideration by the Minister as an exception to those instructions – (section 188(1)(f)).

[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 residence appeals, the Tribunal normally proceeds in an inquisitorial manner.

[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 – (section 188(5)).

3. NOTICE OF APPEAL

[3.1] An appeal must be brought within 42 days after the date the appellant is notified of the decision appealed against.

[3.2] Where extrinsic evidence establishes when notice was actually given of the Immigration New Zealand decision, time for appeal runs from that date – see *Rao v Minister of Immigration* [2015] NZHC 2669. Where notice was given:

(a) by registered letter or courier, the time for appeal runs from delivery of the Immigration New Zealand decision to the person's contact address;

(b) by email, the time for appeal runs from delivery of the Immigration New Zealand decision 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 3 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] A notice of appeal must be physically 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.

[3.4] 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.

[3.5] The Tribunal does not have jurisdiction to accept an appeal out of time.

[3.6] 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 at www.justice.govt.nz/tribunals/IPT. It must be completed in English, be signed by the appellant and be accompanied by any prescribed fee – (regulations 4(1) and 15).

[3.7] An appeal is not properly made until it has been received by the Tribunal, signed, with the prescribed fee, within the time for lodgement. The Tribunal has no ability to accept an appeal without payment of the prescribed fee.

[3.8] Any appeal must be filed in the office of the Tribunal in Auckland (in person or by courier) at:

Specialist Courts and Tribunals Centre
Level 1, Chorus House
41 Federal Street
Auckland 1010 (Monday to Friday between 9am–4.30pm)

or be sent by post to:

Immigration and Protection Tribunal
DX EX 11086
Auckland 1010
New Zealand

or:

Fax: (09) 914-5263 (the original hard copy must follow).

or:

Email: IPT@justice.govt.nz (the original hard copy must follow).

[3.9] A notice of appeal should be accompanied by:

(a) two copies of the decision appealed against;

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

(c) two copies of any further information the person wishes to file (but see [6A.3] below as to the limitations on the Tribunal's ability to take further information into account); and

(d) the appropriate fee (NOTE: the fee is **not** refundable).

4. REPRESENTATION

[4.1] An appellant may represent himself or herself or be represented by a lawyer or licensed immigration adviser or person exempt from licensing under the Immigration Advisers Licensing Act 2007, at his or her own expense. A minor (a person who is under 18 years of age and who is not married or in a civil union) must be represented by a responsible adult – (section 375).

5. SUBMISSIONS

[5.1] The appellant (or representative) may make submissions in writing. The submissions should accompany the appeal form or be lodged within the 42 days allowed for lodgement of the appeal.

[5.2] Submissions can be lodged after the 42 days but, where they are lodged after the 42 days, the appellant runs the risk of the Tribunal determining the appeal before the submissions are lodged. Where submissions are delayed, the Tribunal expects to be notified of this and advised when they can be expected.

[5.3] Submissions should address the grounds of appeal relied on (ie, correctness and whether there are special circumstances).

[5.4] The Tribunal does not require appellants to provide copies of its own decisions or New Zealand court authorities on established jurisprudence. It does require two copies of foreign court decisions and New Zealand court authorities on novel points of law.

[5.5] The Tribunal does not require appellants to provide copies of documents which are already on the Immigration New Zealand file, except for the decline letter.

6. INFORMATION AND EVIDENCE

[6.1] 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).

[6.2] Two copies of all submissions, documents and other evidence must be filed.

6A. INFORMATION AND EVIDENCE SUBMITTED BY THE APPELLANT

[6A.1] It is the responsibility of an appellant to establish his or her case or claim and to ensure that all evidence and submissions are provided to the Tribunal before it makes its decision – (section 226(1)).

[6A.2] All statements must be signed and dated. Documentary evidence should be provided in an indexed, tabulated bundle. All documents should be single-sided.

[6A.3] In determining whether the Immigration New Zealand decision was correct, the general rule above at [6.1] is subject to the requirement that the Tribunal may not consider any information or evidence adduced by the appellant that was not provided to the Minister or the immigration officer before the time at which the Minister or the officer made the decision that is the subject of the appeal – (section 189(1)). However, this is subject to the following exceptions:

(a) The Tribunal may consider information or evidence not provided by the appellant to the Minister or the immigration officer before the time of the decision if it is satisfied that:

  (i) the information or evidence existed at the time the decision to refuse the visa was made, and would have been relevant to the making of that decision; and

  (ii) the appellant could not, by the exercise of reasonable diligence, have placed that information or evidence before the Minister or the immigration officer at the time at which the Minister or the officer made the decision on the application; and

  (iii) in all the circumstances it is fair to consider the information or evidence – (section 189(3)(a)).

(b) The Tribunal may also consider information or evidence not provided by the appellant to the Minister or the immigration officer before the time of the decision if it considers that it is necessary for it to have the information or evidence for the purpose of considering whether to make a 'special circumstances' determination under section 188(1)(f) – (section 189(3)(b)).

(c) The Tribunal may, if it considers it fair in all the circumstances to do so, determine the appeal under section 188(1)(d) where:

(i) any particular event has occurred after the Minister or the immigration officer made the decision on the application; and

(ii) the Tribunal is satisfied that the event materially affects the applicant's eligibility under residence instructions – (section 189(6)).

[6A.4] All written evidence which is not in the English language must be accompanied by an accurate translation by a suitably qualified independent translator (regulation 11).

[6A.5] Where an appellant seeks to adduce evidence in electronic format (ie, video clips, websites etc), he/she is normally expected to provide such information on a flash drive, CD or DVD and should check with the case manager in advance as to the compatibility of the file type and format with the Tribunal's systems.

6B. INFORMATION AND EVIDENCE GATHERED BY THE TRIBUNAL

[6B.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).

[6B.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).

[6B.3] To assist it to determine an appeal or matter, the Tribunal may require the appellant to allow biometric information to be collected from him or her – (section 232).

6C. INFORMATION AND EVIDENCE PROVIDED BY IMMIGRATION NEW ZEALAND

[6C.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)).

[6C.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 include the residence file, records and electronic notes held by Immigration New Zealand concerning the appellant. If the Tribunal requires other files or documents, including those relating to temporary visa applications and those held in the name of other family members, it will seek such files or documents, pursuant to [6C.3] and [6C.4].

[6C.3] The Tribunal may require the chief executive to seek and provide information, but no party may request the Tribunal to exercise this power – (section 229).

[6C.4] The Tribunal may require the chief executive to arrange for an interview to be conducted with any specified person for any specified purpose and in any specified manner, and for the report of that interview to be provided to the Tribunal, where:

(a) the Tribunal considers that the decision under appeal depended, in whole or in part, upon the recorded results of an interview conducted with the appellant or with some other person connected with the application; and

(b) those results involved the recording of an exercise of judgment on the part of the interviewing officer as opposed to the recording of facts; and

(c) the Tribunal considers that further written evidence or submissions will not assist to confirm or test those results – (section 189(4)).

[6C.5] Such an interview may not be conducted by any immigration officer who has previously interviewed the person – (section 189(5)).

7. SPECIAL NEEDS OF APPELLANTS

[7.1] 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.

8. FAMILY APPEALS AND CHILDREN

[8.1] An appeal against a decision concerning a residence class visa may include any of the principal applicant's children and his/her spouse or partner included in the application for that visa – (regulation 6(1)). One appeal form and one filing fee only is required.

[8.2] 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 must be treated as an appeal by all of the persons specified in the notice of appeal, unless the principal appellant states otherwise in that notice – (regulation 6(2)).

[8.3] Where two or more members from the same family each appeal and each appeal relates 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)).

[8.4] Where multiple family members have appeals pending or where representatives represent appellants whose proceedings are based on the same or substantially similar grounds, they should advise the Tribunal as early as possible of any objections they may have to the appeals being considered together.

[8.5] 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 and adult relatives of the minor known to the Tribunal.

9. CONTACT ADDRESS

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

[9.2] The appellant, affected person or applicant may substitute a different contact address at any time, by giving notice in writing to the Tribunal – (section 387A(6)).

[9.3] The appellant, affected person or applicant must notify the Tribunal in a timely manner, of a change in either of those addresses – (section 225(2)(b)).

[9.4] 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)).

[9.5] Any notice or other document required to be served must comply with the provisions of sections 386 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).

[9.6] 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).

[9.7] 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).

10. OFFICIAL INFORMATION ACT AND PRIVACY ACT REQUESTS

[10.1] 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 1993 – (section 2(1)(b)(viii) of that Act).

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

11. WITHDRAWAL OF APPEAL

[11.1] An appellant or applicant may at any time withdraw an appeal – (section 238). Notice of withdrawal should be in writing and signed. The filing fee will not be refunded.

STEPS PENDING DETERMINATION

12. TIME LIMITS SET BY THE TRIBUNAL

[12.1] 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. Confirmation of the time within which the outstanding matter will be completed must also be given.

13. MULTIPLE APPEALS BY ONE PERSON

[13.1] 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.

14. POWER TO ISSUE A SUMMONS

[14.1] While residence appeals are 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).

[14.2] 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 Summary Proceedings Act 1957 – (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).

[14.3] 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, and any communications 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 summoned. Where it is intended that the witness produce any papers, documents, records or things in his or her possession or control, full particulars must also be given.

[14.4] 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.

[14.5] 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

15. ORDER OF DETERMINATION AND REQUESTS FOR PRIORITY

[15.1] 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)).

[15.2] 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 by any relevant evidence in support. The request should be addressed to the Chair of the Tribunal.

16. ENQUIRIES ABOUT DELIVERY OF DECISION

[16.1] The Tribunal's website provides updated information as to the current estimated average timeframe for determining a residence appeal. 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.

[16.2] 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, the appeal number and a cogent reason why the advice is being sought. Only one such enquiry in relation to any appeal is permitted.

[16.3] The Tribunal will respond to the enquiry in writing and not by telephone. The response will be a "best estimate" only. No information as to outcome will be given.

17. DECISIONS

[17.1] The Tribunal must determine a residence appeal on the papers – (section 234(2)).

[17.2] A residence appeal is normally decided by one member of the Tribunal, unless the Chair directs otherwise because of exceptional circumstances – (section 221).

[17.3] 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).

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

[17.5] Notice of a decision on a residence appeal may be given by courier (sections 4 and 386A) or, where the person has designated an electronic address as his or her contact address, by email (section 387A). It will be sent 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;

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

AFTER THE DECISION

18. PUBLICATION OF DECISIONS

[18.1] Research copies of 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) may be published instead of the full version of the decision released to the parties.

[18.2] Research copies of decisions on residence appeals are normally depersonalised by the Tribunal, to reflect the high degree of personal information required of applicants by Immigration New Zealand and the relatively low degree of public interest issues in most residence appeals.

19. RETURN OF DOCUMENTS

[19.1] Any person who has provided original documents to the Tribunal in the course of the appeal may have them returned with the decision, on request in writing. 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.

20. APPEAL TO HIGH COURT AND APPLICATIONS FOR JUDICAL REVIEW

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

[20.2] 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 (as to when notice is given, see [17.5] above). 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)).

[20.3] 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)).

[20.4] 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)).

[20.5] 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– (section 247(1) and section 249(3) and (4)).

[20.6] 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 together, unless it considers it impracticable to do so – (section 249A).

[20.7] 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 P Spiller
Chair
Immigration and Protection Tribunal