

Guidelines for Making an Appeal to the AST **By Asylum Support Appeals Project (ASAP)**

Introduction

The following is a guide on how to complete an appeal to the Asylum Support Tribunal (AST). It is aimed at organisations that are assisting asylum seekers with their appeals to the AST against the refusal or termination of asylum support by *BIA*. It provides a step by step guide on completing the appeal form (known as the Appeal Notice) as well as providing an overview of the procedures in general. The last part of these guidelines provides a list of useful resources where more specific information on asylum support issues and appeals can be obtained.

What is the AST?

The Asylum Support Tribunal (AST) is a special tribunal that was set up in 2000 after the introduction of the National Asylum Support Services (NASS). It is independent from the Home Office. Before NASS provided asylum support, asylum seekers were supported by local authorities after losing the right to social security benefits in 1999. NASS now no longer exist and support is provided by the Borders and Immigration Agency (BIA) which is the new name for IND.

There is only one AST tribunal in the UK that deals with asylum support appeals and this is in Croydon. *The AST do not deal with immigration or asylum appeals.* For more details on the work of the AST see *useful resources*

The judges who hear and make decisions on appeals at the AST tribunal are called Adjudicators. These are independent lawyers that have been appointed by the Home Office.

The Government has drawn up regulations about how an AST appeal should be carried out. These are called the Asylum Support Appeals (Procedures) Rules 2000. These set out the procedures surrounding the appeal itself such as the time frame limits etc. To obtain a copy of these rules see *useful resources*.

When can you appeal to the AST?

Asylum seekers, their dependents and some groups of failed asylum seekers, have the right to appeal against a decision by BIA to *refuse* or *withdraw* support.

This is the support provided by BIA which includes basic living expenses and/ or housing for asylum seekers and their dependents. . A *refusal* of support would normally apply to an asylum seeker who has applied for section 95 or section 4 support but who is considered as not meeting one of the eligibility criteria. A *withdrawal* of support normally takes place when the asylum seekers is considered to have breached one of the various conditions set out in

the contract they sign with BIA when they first apply for support or the contract they sign with their accommodation provider/ landlord. Support is also withdrawn when the asylum seeker has been refused and lost any asylum appeals they had. For more information on asylum support in general see *useful resources*

Where an asylum seeker has a right of appeal to the AST, an appeals form, known as the *Notice of Appeal*, should be included with the decision letter sent to them by BIA. In this letter BIA should give reasons why they are refusing or withdrawing their support.

Those who have no right to an AST appeal

There are some groups of asylum seekers who have no right to appeal against the decision to withdraw or refuse support. This applies to anyone who is not defined as an asylum seeker e.g. if they have not yet claimed asylum or if their asylum claim has been fully refused (including appeals) and they have no children under 18 in the UK. Asylum seekers in this situation may be entitled to **Section 4** support, particularly if there are clear reasons why they cannot return to their country of origin. For more information on Section 4 see *useful resources*.

There is also no right of appeal to the AST for asylum seekers who are refused support on the basis of not having claimed asylum 'as soon as reasonably practicable'. These are known as Section 55 cases and the legislation relating to Section 55 was introduced under the Nationality, Immigration and Asylum Act 2002. . However, as a result of a high court ruling in May 2005, known as the Limbuela case, BIA can only refuse to support to asylum seekers under S55 if they are satisfied that the individual has some other source of support available to them . For more information on Section 55 see *useful resources*.

Lastly, those asylum seekers supported by local authorities under the interim arrangements cannot appeal to the AST against the decision to withdraw their support. These are normally asylum seekers who entered the UK and claimed asylum prior to the introduction of NASS in April 2000. Local One Stop Services should be able to provide advice on challenging the removal of interim support. For details on One Stop Services see *useful resources*.

What does the appeal cover?

Appeals are limited to the decision by BIA to refuse or withdraw support. It is not possible to appeal against the type of support given to an asylum seeker, or whether it is enough money to meet their personal needs. Rates of support for asylum seekers and their dependents are fixed at 70% of Income Support level for adults and 100% for a child.

It is also not possible to appeal to the AST on BIA' decision to disperse an asylum seeker or about the type of accommodation they are given. The correct way to challenge a decision about dispersal and accommodation is by Judicial Review. *For more information on Judicial Review see useful resources*.

Assistance with getting to the court.

To ensure the person making the appeal is able to attend the court; BIA will normally send a travel warrant to the address on the appeal form. Where necessary, they will also provide overnight accommodation. This is normally given to those who live outside London and where it would be difficult for them to get to the hearing on time. Local One Stop Services will be able to provide advice on any problems relating to both travel warrants and overnight accommodation. *For information on One Stop Shops see useful resources.*

Time limits for appeals to the AST

There is a very short timeframe for submitting an appeal. The person will basically have 3 working days (+ 2 days for posting) in which to fax or post their Notice of Appeal and the BIA refusal letter to the AST. That is a total of 5 days from the date that appears on the top right hand corner of the refusal letter from BIA. Please note that working days do not include Saturdays, Sundays, Bank Holidays, Christmas Day, Boxing day and Good Friday. Failure to meet this deadline may result in the appeal being considered *invalid* but it is possible to submit an out of time appeal- see below.

Late appeals

The person appealing can submit an out of time appeal under certain circumstances. The AST will consider this appeal if they think it is in the interest of justice to do so. This is defined in the legislation as where the person appealing is prevented from complying with the time limit by circumstances beyond his control'. Reasons accepted by the AST include situations where the person needed advice about completing the form, where there were health problems which made it difficult to meet the deadline and where the person did not receive a copy of the appeal notice on time. If the appeal is late, you should explain the reasons in a covering letter and send any confirmation, such as a doctor's letter, to show why the person was unable to meet the deadline. If there is a clear explanation and the delay is less than a week, the AST will normally extend the deadline.

Completing the appeal notice

If you do not have a copy of Appeal form this can be downloaded from the AST website (see useful resources.). It is three pages long and consists of five different sections. Brief guidelines on how to fill in the form are provided by the AST on page three of the Appeal Notice. The form must be completed in full and in English. Failure to do so can result in it being considered **invalid** and the appeal will fail.

Both the person appealing and their representative can complete the Notice of Appeal.

Section One and Two

This section of the forms covers the asylum seekers personal details and is fairly straightforward. It is important to include the BIA reference number in this section as failure to do so can result in it being considered **invalid**.

The address provided in section two should be one where the person appealing can receive post. For those with no fixed address it might be advisable for the organisation assisting them to use their offices as a c/o address for them. They can then notify them of the hearing date and any requests for information requested by the AST.

Section Three

In the first part of this section the person appealing is asked to provide 'the date of the decision letter received from BIA against which you are appealing'. This is the date on the letter BIA sent to the asylum seekers notifying them of their intention to refuse or withdraw their support. They also request that a copy of this letter be attached to the Appeal Notice. Failure to include this information can result in the appeal being considered **invalid**.

Section Four

Section four asks what type of hearing the person wishes to have. They are three options available. The first is that they can have their appeal determined on papers. This means that the adjudicator will make a decision based on the papers they have been submitted and they will not have to attend the AST. However, in more complex cases, the adjudicator may decide that it not possible to decide the appeal on papers and that the person appealing needs to attend the AST to give evidence. When this happens they will write to the asylum seeker, and their representatives, informing them of their decision and inviting them to attend an oral hearing.

The second option is that they can request an oral hearing but one where they will not be present. This might be requested in cases where the representative will be attending on their behalf or where the person appealing has submitted evidence which they wish to be heard in public. It is usually best for the person appealing to attend an oral hearing so they can explain their case in full.

The third option is to request an oral hearing which they attend. The person appealing can bring his or her representative or attend alone.

Hearings are attended by BIA representatives who put forward the case for withdrawing or refusing support. If the person appealing or their representatives attend the hearing, then this is also their opportunity of put forward their case for not removing support.

It is important to note that if an asylum requests an oral hearing then the AST has to comply with this request.

The Asylum Support Appeals Project runs a duty scheme on Mondays and Thursdays at the AST. If their appeal is being heard on either of these two days then the person appealing may be able to get free, confidential legal advice for one of our legal advisors. Our legal advisers may also be able to represent them with their appeals on the day. For more information about ASAP see useful resources.

Interpreting Support

The person appealing is asked whether they require an interpreter, and if so, which language they speak. As the hearings can be both complex and lengthy it may be advisable to request an interpreter unless they are fluent in English. This service is free of charge and interpreters employed by the court are independent.

The final part of section four asks if the person appealing is to be represented in this appeal. If your organisation is able to continue to advise them about the appeal, you should include your details here. You will then, along with the person appealing, receive information about the appeal hearing. They are then asked whether their representative will be attending the hearing. If you are not attending the appeal it is very important to tick the **No** box. The person appealing can then access any free legal representation they may be available on the day of their hearing from the Asylum Support Appeals Project (ASAP).

Section Five

Section five covers the grounds of the appeal. The person appealing is asked to state the reasons for their appeal and to explain what points in the decision letter they disagree with. Again the AST stress that failure to complete this section may result in the appeal being treated as **invalid**

This section of the form can appear the most daunting, as it can be difficult to identify what type of grounds needs to be included in the appeal and ones which are likely to strengthen the case.

The grounds submitted in the Appeal Notice should be closely related to the reasons set out by BIA in their decision letter refusing or withdrawing support.

For example, where support is being refused in an application for section 4, also known as Hard Case support, BIA would outline the reason why they think the person appealing is not eligible. It could be that they don't consider them to be destitute or that they fail to meet another of the eligibility criteria's attached to receiving Section 4. The BIA decision letter will quote the piece of legislation that applies, plus the relevant sub section of that legislation.

So in cases such as these the wording would appear as follows: "*Your application has been carefully considered by to see if you are eligible but I am not satisfied that you satisfy one or more of the conditions set out in regulation 3(2) of the Asylum (Provision of Accommodation to Failed Asylum Seekers) Regulations 2005*". They will then go on to state which one the conditions the person appealing does not meet.

In the grounds of appeal the person appealing will then state the reasons they disagree with that decision and why they do meet the criteria. If the issue was destitution they would include information about the current living conditions and how they have been surviving. If it concerns another ground such as being unfit to travel, then they will need to provide information about their medical condition.

The following table provides a list of some of the reasons BIA might refuse or withdraw support and the types of grounds that could be included in appeal. This list is by no means exhaustive and is intended as general guidance only. The grounds of appeal will differ from case to case so it important that any grounds submitted relate closely to both the reasons for refusal and to the asylum seekers individual circumstances.

Reason for refusing or withdrawing support	Possible Grounds for Appeal
<i>The applicant is not destitute:</i>	Provide evidence on how she/he has been supporting themselves, proof of any charitable support they may have been receiving etc. If they have been staying with friends, a letter confirming the dates they stayed with them and why they can no longer remain there.
<i>They are no longer an asylum seeker as their claim has been exhausted</i>	Any information to show that there is claim or appeal outstanding. This might include solicitors letter, letter from the Home Office etc.
<i>Refusal of section 4 support on the grounds that the asylum seekers was not taking steps to leave the UK voluntarily</i>	<p>If they are unfit to travel than include details of any medical problems they are experiencing.</p> <p>If they person is over 6 months pregnant or has a baby under six weeks then evidence which confirms this- e.g. letter from the hospital, child birth certificate.</p> <p>If the person has submitted fresh claim for asylum or Judicial Review, then information stating when this was submitted.</p> <p>If they a/s has taking reasonable step i.e attempted to get a travel document or approached IOM for assistance to return voluntarily then this information should be included</p>

<p><i>Refusal on the grounds that they breached one of the conditions attached to receiving ASYLUM support and housing.</i></p> <ul style="list-style-type: none"> • Failure to notify a change of circumstances • Concealing Financial Resources • Unauthorised absence from the property • Failure to travel to a dispersal accommodation 	<p>If the persons disputes that there has been a breach of conditions, then information supporting this should be submitted</p> <p>The grounds should include details of why the applicant failed or was prevented from informing BIA out changes in their circumstances</p> <p>If BIA believes the person has been concealing financial resources then the grounds of appeal will include information on living conditions and any supporting evidence they have such as bank statements etc.</p> <p>Evidence to shows that they had a reasonable excuse for being absence. This could be due to racial harassment, illness problems with the accommodation etc.</p> <p>Evidence to show that the applicant had a reasonable excuse for not travelling, such as disruption to medical treatment, close family ties in an area; a child in the household has attended the same school for 12 months. etc</p>
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For more information on what constitutes a breach of conditions see *useful resources*.

Grounds unlikely to be considered by the AST

It is important to note that the AST is unable to take into account grounds of appeal that solely relate to a asylum seeker's claim for asylum or any concerns they have for their personal safety were they to be returned. This is because the appeal to the AST only covers the asylum seekers right to asylum support. The AST has no power to consider matters relating to a person's asylum claim. These are heard by a different court called the Asylum and Immigration Tribunal (AIT)

The only cases where issues concerning asylum would be relevant is when the person appealing has made a fresh application for asylum and this has yet to be considered by the Home Office. Their appeal would therefore be on the grounds that removal of support would

be a breach of their human rights as they still have an outstanding claim in the UK. In these cases they would need to provide proof that this fresh claim have been delivered to the IND , normally in the form of a recorded delivery slip and a copy of the fresh claim

What happens if the appeal is considered invalid?

If the AST decide that an Appeal Notice is invalid they will write to the asylum seeker, and their representative, explaining why this is so. As explained throughout these guidelines there are a number of reasons why an appeal will be considered invalid. These include issues such as failure to include the BIA reference numbers, failure to include the grounds for the appeal and late submissions of the Appeal Notice. It is possible to write to the AST and request that they reconsider their decision not to hear the appeal. This would need to be accompanied by a letter outlining the why the form was submitted late or was incomplete. They can also seek advice for the Asylum Support Appeal Project on what to do. *See useful resources.*

What happens after the appeal notice has been sent?

If the Notice of Appeals has been accepted by the AST, they will write to the person appealing and their representative if they have one, giving them the time and date when the hearing will take place. An appeal should normally be heard approximately 7-9 days after the Notice of Appeal has been submitted. In these letters the asylum seekers is referred to as the **appellant** and BIA as the **respondent**. The AST letter will also include directions which is usually a list of documents they ask the person appealing to provide to the AST prior to the hearing. These normally include any evidence that is relevant to the appeal. For example, if the person appealing has problems they may ask them to provide any up to date letters they have received from their doctors/ consultants. If, on the other hand, they are being accused of working they may be asked to produce copies of recent bank statements. Any extra documents requested by the AST need to be sent no later than noon of the day before the hearing.

AST free phone

The AST have a free phone for asylum seekers who have practical questions regarding their hearing. For example they can advise them of what stage their appeal is at and when it might be listed. They can also give general information on how appeal hearings are structured and what information they may be required to provide to the AST. Asylum seekers can also call the free-phone if they need directions to the AST or if they are having problems getting there. Please note that the free-phone is unable to provide information on issues such as how to fill out the form or advice on whether an appeal is likely to be successful. The number is 0845 603 3884.

Asylum Support Appeals Project (ASAP)

ASAP provides free confidential legal advice and representation at the AST tribunal on Monday and Thursday mornings. We also run and telephone helpline for refugee community

organisations and other agencies who are advocating on behalf on asylum seekers. We can also provide general advice on AST appeals and provide advice on completing the Appeal Notice. Organisations can refer asylum support appeal cases to ASAP and we may be able to represent them at their appeal. We will assess potential referrals on a case by case basis and advise whether the referral can be accepted. Feel free to phone us if you have any questions about this guidance. For information on ASAP *see useful resources*.

USEFUL RESOURCES

For more copies of BIA policy bulletins go to their website which is <http://www.ind.homeoffice.gov.uk/applying/nass/newsandinfo/policybulletins/>

For more information on the work of the Asylum Support Tribunal go to their website which is: <http://www.asylum-support-adjudicators.org.uk>

The AST free phone number is 0845 603 3884.

A copy of the Asylum Support Appeals Rules (2000) can be obtained from the following <http://www.opsi.gov.uk/si/si2000/20000541.htm>

For more information on Section 55 Cases go to the following section of Refugee Council's website http://www.refugeecouncil.org.uk/infocentre/asylumlaw/s55/s55_intro.htm

For information on who qualifies for SUPPORT see our fact sheet which can be obtained from our website at www.asaproject.org.uk

For information on the how to apply for Section 4 support please see our fact sheet which can be obtained from our website at www.asaproject.org.uk

For more information on what constitutes a breach of conditions see our fact sheet which can be obtained from our website at www.asaproject.org.uk

For information on Judicial Reviews please see our fact sheet which can be obtained from our website at www.asaproject.org.uk

For Information on the location of One Stop Services in the UK go to following section of Refugee Councils website.

<http://www.refugeecouncil.org.uk/infocentre/entit/sentit001.htm#oss>

For information and advice from Asylum Support Appeals Project please contact our helpline on 0845 603 3884.