Immigration and Protection Tribunal Guide 3

Making a Deportation Appeal: a guide for residents and permanent residents

Under sections 201 (1)(a) & (b) and 206(1)(c) of the Immigration Act 2009

About the Immigration and Protection Tribunal

The Tribunal is an independent body that hears appeals about residence visas, refugee and protection 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.

How to use this Guide

This Guide explains if you can make an appeal against deportation, and how to do it.

If you decide to appeal, you must fill out *Form 3 –Notice of Appeal by a Resident/Permanent Resident Against Deportation*. 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).

Part 1 of the Guide tells you about the Tribunal, who can appeal to it and for what reasons. It answers the following questions:

1.1 What is a deportation appeal and can I make one?
1.2 What can the Tribunal decide?
1.3 How many days do I have to appeal?
1.4 How much will it cost me to appeal?
1.5 Do I need a lawyer or representative if I want to appeal?
1.6 I want a lawyer but I can't afford one. What can I do?
1.7 Can I have an interpreter to help me appeal?
1.8 Can I appeal if I am under 18 years old?
1.9 Can I include other people in my appeal?
1.10 Will I need to speak to the Tribunal?
1.11 What information should I send the Tribunal?
1.12 What if things change after I appeal to the Tribunal?

Part 2 is a step-by-step checklist to use when making your appeal.

Part 3 explains what happens after you make an appeal.

DO NOT LEAVE YOUR APPEAL UNTIL THE LAST MINUTE

- **Apply for legal aid NOW if you want a lawyer and cannot afford one (see section 1.6).**
- **Gather all your evidence for the Tribunal as soon as you can (see section 1.11).**
- **Start getting ready for your hearing NOW.**
- **Send your appeal by the deadline (see section 1.3).We cannot extend this deadline.**

www.justice.govt.nz/tribunals/ipt	The Immigration and Protection Tribunal website.
Immigration and Protection Tribunal Practice Note 1/2010 (Deportation)	Contains detailed information about the law on deportation appeals, and how the Tribunal decides them. You can get a copy from the Tribunal (see the back of this form for contact details) or from its website.
www.iaa.govt.nz	The Immigration Advisors Authority website. The Authority regulates immigration advisers (also known as immigration consultants or agents) and lists all licensed advisers.
www.legislation.govt.nz	An official government website where you can read and download New Zealand laws – including the Immigration Act 2009, the Immigration Regulations and other laws referred to in this Guide.
www.justice.govt.nz/services/legal-help/legal-aid	If you make an appeal, you may be able to get legal aid (government funding to help people who cannot afford a lawyer). This website explains how legal aid works.

Explanation of terms

appellant	Someone making an appeal to the Immigration and Protection Tribunal against an Immigration New Zealand decision (or in some cases, a decision made by the Minister of Immigration).
certified copy of a document	A true copy, approved by someone legally allowed to approve it. If you are in New Zealand, certified copies must be approved by a lawyer, notary public, Justice of the Peace or court official.
certified translation	A written translation into English, from another language, that has been officially approved by a recognised translator. The translator must not be a friend or a family member.
dependent child	A child who is: (a) under 18 years old, and (b) not married or not in a civil union, and (c) dependent on you, whether or not the child is your child.
deported, deportation	The removal of a person by the New Zealand government because they have no right to remain here.
detention	Anyone detained (held) in prison or at the Mangere Refugee Resettlement Centre or any other place is said to be "in detention".
evidence	Any information about your situation that affects your appeal. The evidence you give the Tribunal can include your own written

	statement about your situation, and any other documents that relate to your situation.
humanitarian	If something is humanitarian (such as "a humanitarian appeal") it is concerned with the interests and welfare of people.
lodgement fee	The NZ$700 fee you must pay when you appeal to the Tribunal.
member	The members of the Immigration Protection Tribunal are the people who make decisions about appeals. They are appointed by the Governor-General on the recommendation of the Minister of Justice.
protected person	To be recognised as a protected person in New Zealand, you must show there are substantial grounds for believing you would be in danger of one of the following if deported from New Zealand: • torture; or • arbitrary deprivation of life; or • cruel, inhuman or degrading treatment.
refugee	To be recognised as a refugee in New Zealand, you must meet the definition of a "refugee" in the United Nations 1951 Convention Relating to the Status of Refugees. The Convention says a refugee is someone who: "owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion: (a) is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country; or (b) not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it."
representative	Someone who represents you during an appeal to the Tribunal. They must be a lawyer, a licensed immigration adviser or someone who is not licensed but is allowed by law to give immigration advice. However, if you want to, you can represent yourself – you do not need a representative.
resident, permanent resident	Someone who holds a resident visa or a permanent resident visa.
submissions	The written reasons you give the Tribunal for why you think your appeal should succeed.

Part 1: About Deportation Appeals by Residents/Permanent Residents

1.1 What is a deportation appeal and can I make one?

If Immigration New Zealand has decided you can be **deported** and you are a resident or permanent resident, you can appeal the decision for one or both of the following reasons. They are known as your "grounds for appeal":

a) 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.

   See section 207 of the Immigration Act 2009.

b) 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 you are liable for deportation. The table below will help you work this out, and also tell you the deadline by which the Tribunal must receive your appeal.

Whatever your grounds for appealing, you must make your appeal by filling out *Form 3 – Deportation Appeal by a Resident/Permanent Resident*. 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/forms-and-guides 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 (see section 1.4) and supporting documents (see section 1.11).

If you are liable for deportation because …	**Your grounds for appeal are…**	**The Tribunal must receive your appeal by…**
your residence visa was granted as a result of an administrative error. See Section 155 of the Immigration Act 2009	on the facts and on humanitarian grounds	28 days after you received the Deportation Liability Notice
you were convicted of a crime, and the Court decided that your real identity is different from the one on your visa. See Section156(1) (a) of the Immigration Act 2009.	on humanitarian grounds only	42 days after you received the Deportation Liability Notice. If you have held your visa under a false identity the whole time you have been in New Zealand, **count the 42 days** from the date you first arrived;

		or If you previously held a visa under your real identity and later held one under a false identity, **count the 42 days** from the day after the visa in your real name expired.
the Minister has decided that your real identity is different from the one on your visa. See Section 156(1)(b) of the Immigration Act 2009.	on the facts	28 days after you received the Deportation Liability Notice
	AND on humanitarian grounds	42 days after you received the Deportation Liability Notice. If you have held your visa under a false identity the whole time you have been in New Zealand, **count the 42 days** from the date you first arrived; or If you previously held a visa under your real identity and later held one under a false identity, **count the 42 days** from the day after the visa in your real name expired.
You gained your resident visa or entry permission through fraud, forgery, false or misleading representation, or concealing relevant information. See Sections 158(1)(a) and (b) of the Immigration Act 2009.	on humanitarian grounds only (if you have been convicted of a crime) OR on the facts AND on humanitarian grounds (if you have <u>not</u> been convicted of a crime)	28 days after you received the Deportation Liability Notice
You gained citizenship through fraud, false representation, or concealing relevant information. See Section 158(2) of the Immigration Act 2009.	on humanitarian grounds only	28 days after you received the Deportation Liability Notice
You have not met the conditions of your visa or have breached them. See Section 159 of the Immigration Act 2009.	on the facts and on humanitarian grounds	28 days after you received the Deportation Liability Notice
Within 5 years of you first holding	on the facts and on humanitarian	28 days after you received the

a resident visa, there is new evidence about your character that (if it had been known at the time) would have stopped you from being granted a visa.	grounds	Deportation Liability Notice
You have been convicted of a crime. See Section 161 of the Immigration Act 2009.	on humanitarian grounds only	28 days after you received the Deportation Liability Notice

Making a deportation appeal: a visual guide for residents & permanent residents

If you are liable for deportation because

your residence visa was granted as a result of an administrative error:

your grounds for appeal are:

on the facts AND on humanitarian grounds .

The Tribunal must receive your appeal by:

28 days after you received the Deportation Liability Notice.

If you are liable for deportation because

you were convicted of a crime, and it was discovered that your real identity is different from the one on your visa:

your grounds for appeal are:

on humanitarian grounds.

The Tribunal must receive your appeal by:

42 days after you received the Deportation Liability Notice.

If you have held your visa under a false identity the whole time you have been in New Zealand, **count the 42 days** from the date you first arrived;

or

If you previously held a visa under your real identity and later held one under a false identity, **count the 42 days** from the day after the visa in your real name expired.

If you are liable for deportation because

you were found to be holding your visa under a false identity:

your grounds for appeal are:

on the facts.

The Tribunal must receive your appeal by:

28 days after you received the Deportation Liability Notice.

your grounds for appeal are:

on humanitarian grounds.

The Tribunal must receive your appeal by:

42 days after you received the Deportation Liability Notice.

If you have held your visa under a false identity the whole time you have been in New Zealand, count the 42 days from the date you first arrived;

or

If you previously held a visa under your real identity and later held one under a false identity, **count the 42 days** from the day after the visa in your real name expired.

Visual guide continued:

If you are liable for deportation because	*your grounds for appeal are:*		*The Tribunal must receive your appeal by:*	
you gained your resident visa or entry permission through fraud, forgery, false or misleading representation, or concealing relevant information:		on humanitarian grounds only (if you have been convicted of a crime) OR on the facts AND on humanitarian grounds (if you have <u>not</u> been convicted of a crime).		28 days after you received the Deportation Liability Notice.
you gained citizenship through fraud, false representation, or concealing relevant information:		on humanitarian grounds only.		28 days after you received the Deportation Liability Notice.
you have not met the conditions of your visa or have breached them:		on the facts AND on humanitarian grounds.		28 days after you received the Deportation Liability Notice.
within 5 years of you first holding a resident visa, there is new evidence about your character that (if it had been known at the time) would have stopped you from being granted a visa:		on the facts AND on humanitarian grounds.		28 days after you received the Deportation Liability Notice.
you have been convicted of a crime:		on humanitarian grounds only.		28 days after you received the Deportation Liability Notice.

1.2 What can the Tribunal decide?

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

a) allow your appeal; or

b) allow the appeal and suspend your liability for deportation for up to 5 years; or

c) decline (turn down) your appeal; or

d) decline your appeal, but reduce or remove the period you are prevented from entering New Zealand; or

e) decline your appeal, but delay your deportation.

See sections 202, 205, 209, 212, 215, and 216 of the Immigration Act 2009.

1.3 How many days do I have to appeal?

See the table above – there are different deadlines depending on the reason for your deportation.

1.4 How much will it cost me to appeal?

An appeal costs NZ$700.

1.5 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) a lawyer; or

b) a licensed immigration adviser (they must be licensed with the New Zealand Immigration Advisers Authority: this includes advisers outside New Zealand); or

c) 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
   - 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 3,* 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 http://www.iaa.govt.nz/policy-manual/part-a/who.asp, or phone them on 0508 422 422. See section 1.12 of this Guide for information about changing your representative, or deciding to represent yourself, after you have sent in your appeal.

1.6 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 www.justice.govt.nz/services/legal-help/legal-aid) or from a lawyer.

1.7 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 Part 6 of *Form 3*.

1.8 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 Part 9 of *Form 3*.

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.

1.9 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. A separate fee must be paid by every person over 18 years of age.

1.10 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 section 3.3 for more information about the hearing.

If you do not come to the hearing and you do not have a reasonable excuse, the Tribunal will decide your appeal "on the papers". This means that it makes its decision using only the written information and evidence you and Immigration New Zealand provide (see section 1.11 below).

1.11 What information should I send the Tribunal?

When you send the Tribunal your appeal form, include any documents, evidence and information that will help the Tribunal understand your case and your reasons for appealing. At your hearing, the Tribunal will consider these "supporting documents" as well as your Immigration New Zealand file, your appeal form, and anything said by you, your representative and any witnesses (see section 3.2 of this Guide).

Make sure all the 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.

1.12 What if things change after I appeal to the Tribunal?

You must tell the Tribunal immediately and in writing if:

a) there are changes in your life;

b) you change where you live, or want the Tribunal to contact you at a different address from the one on your appeal form;

a) you change your representative. You and your new representative must fill out Form 8 – Authority to Act form (available from www.justice.govt.nz/tribunals/ipt) and send it with your letter;

b) 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.**

Part 2: making your appeal – a checklist

☐ Read this Guide carefully.

☐ Fill out *Form 3 –Notice of Appeal by a Resident/Permanent Resident Against Deportation*. 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 Part 6 of *Form 3* 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 Section 8 and 9.

☐ Include two copies of any supporting documents (see section 1.11 of this Guide).

☐ Include your fee of NZ$700. You must pay in New Zealand dollars, using either:

- A credit card (Visa or Mastercard)
- Cash (only if you deliver your completed form to the Tribunal's offices in Auckland)

☐ Deliver or post everything to the Tribunal.

You or a courier can *deliver* it to:

Immigration and Protection Tribunal
Auckland Tribunals
Level 1
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 in section 1.1 of this Guide. The Tribunal cannot accept late appeals.

☐ To work out when you must send your appeal:

- If you have received a Deportation Liability Notice, **start by checking the date you were given the notice.**
- Read the table in section 1.1 to see whether you have 28 days or 42 days to appeal. This is the date the Tribunal must receive your appeal by.

  To assist you when counting 28 or 42 days:

  - To assist you, when counting the number of days:
  - Include Saturdays and Sundays.
  - Exclude days that are public holidays. Please see Section 44 (1) of the Holiday Act 2003.
  - Exclude 26 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 include your credit card details to 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.

Part 3: 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

3.1 Receiving the appeal

At this stage, the Tribunal receives your appeal and checks that everything is correct. We make sure you have used the right form, signed it and included the fee, and that we have received your appeal by the right deadline (see section 1.1).

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, the Tribunal cannot accept it and will let you know immediately. We will return it to you so you can correct it and send it in again if there is still time (see section 1.1 for the deadline).

3.2 Preparation

The Tribunal sends a copy of your appeal to Immigration New Zealand, which sends us its file about your deportation case and any other relevant material. The Tribunal will send you a copy. You must look after this file 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:

a) 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.
b) other information: the member may discuss with you any extra **evidence** that may be needed. It is your responsibility to provide this.
c) 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. Two copies of all submissions need to be provided to the Tribunal.

We will tell you when you need to send us this information.

See section 1.11 to find out more about what information and documents you should send the Tribunal. See also the Tribunal's Practice Note 1/2012 (Deportation) for more about the pre-hearing stage.

3.3 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:

a) an interpreter (see section 1.7 above)

b) any witnesses

c) a lawyer for the Minister of Immigration.

Any member of the public can come. You can bring along supporters, but they cannot take part in the hearing.

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.

3.7 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 Form* (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, you should discuss this with a lawyer or Immigration New Zealand because it is likely that you will be considered to have withdrawn your appeal.

If you withdraw your appeal, you will not get back your NZ$700 fee.

3.8 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.

3.9 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.

a) 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.

b) 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.

Contact the Immigration and Protection Tribunal:

Immigration and Protection Tribunal
Auckland Tribunals

Physical address:
Level 1
41 Federal Street
Auckland 1010
New Zealand
Usual opening hours: Monday to Friday 8.30am – 4.30pm

Postal address:
DX: EX11086
Auckland
New Zealand

Ph: 64 9 914 4299
Fax: 64 9 914 5263
Email: IPT@justice.govt.nz

Disclaimer

This Guide provides general information about making an appeal to the Immigration and Protection Tribunal. It is as correct and complete as possible, but it is not legal advice. You can get more detailed advice from lawyers, licensed immigration advisers, and certain other people who are legally allowed to give immigration advice (see section 1.5 of this Guide).