



Immigration and Protection Tribunal Guide 2

Making a Refugee or Protected Person Appeal

Under sections 194 and 195 of the Immigration Act 2009

About 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.

How to use this Guide

You can appeal to the Tribunal if the Refugee Status Branch has decided to:

- a) decline (turn down) your claim to be recognised as a refugee or protected person; or
- b) stop recognising you as a refugee or protected person; or
- c) cancel your status as a refugee or protected person, and you are a New Zealand citizen.

This Guide will help you understand how to make an appeal. You must then fill out *Form 2 – Notice of Appeal: Refugee or Protected Person*. A copy of the 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 Refugee or Protected Person appeal?*
- 1.2 *What can the Tribunal decide?*
- 1.3 *How many days do I have to appeal?*
- 1.4 *Can the Tribunal accept late appeals?*
- 1.5 *Will it cost me anything to appeal?*
- 1.6 *Do I need a lawyer or representative if I want to appeal?*
- 1.7 *I want a lawyer but I can't afford one. What can I do?*
- 1.8 *Can I have an interpreter to help me appeal?*
- 1.9 *Can I appeal if I am under 18 years old?*
- 1.10 *Can I include other people in my appeal?*
- 1.11 *Will I need to speak to the Tribunal?*
- 1.12 *What information should I send the Tribunal?*
- 1.13 *What if things change after I appeal to the Tribunal?*
- 1.14 *Can I also make a humanitarian appeal?*

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 1.7).**
- **Start gathering the evidence the Tribunal will need to understand your case and why you are appealing (see section 1.12). You will need to send it before your hearing. Some evidence, such as a doctor's report, may take a long time to get ready.**

www.justice.govt.nz/tribunals/ipt The Immigration and Protection Tribunal website.

Immigration and Protection Tribunal Practice Note 2/2012 (Refugee and Protection)
 Contains detailed information about the law on Refugee or Protected Person 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 (see below).

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.

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.

United Nations High Commissioner for Refugees (UNHCR)
 The nearest office of the UNHCR is in Australia:
 3 Lyons Place, Lyons ACT, 2606, Australia
 Telephone: 0061 2 6260 3411
 Fax: 0061 2 6260 3477
 Website: www.unhcr.org.au

Explanation of terms

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| appellant | Someone making an appeal to the Immigration and Protection Tribunal against a Refugee Status Branch decision. |
| 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. |
| deportation | The removal of a foreign national 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 |

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| | is concerned with the interests and welfare of people. |
| 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: <ul style="list-style-type: none"> • 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: <p style="margin-left: 40px;">“owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion:</p> <p style="margin-left: 40px;">(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</p> <p style="margin-left: 40px;">(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.”</p> |
| Refugee Status Branch | The government body that makes initial decisions about Refugee or Protected Person claims. |
| 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. |
| submission | The written reasons you give the Tribunal for why you think your appeal should succeed. |
| working day | Monday, Tuesday, Wednesday, Thursday and Friday, except if a New Zealand public holiday falls on that day. For example, if Anzac Day is on a Monday, that Monday is not considered a “working day”. See Part 2 of this Guide. |

Part 1: About Refugee or Protected Person Appeals

1.1 What is a Refugee or Protected Person appeal?

When you make a Refugee or Protected Person appeal, you are asking the Tribunal to review a Refugee Status Branch decision to:

- a) decline to recognise you as a refugee or protected person; or
- b) decline to consider your claim to be recognised as a refugee or protected person; or
- c) stop recognising you as a refugee or protected person; or
- d) cancel your status as a refugee or protected person; or
- e) refuse to consider another claim from you for refugee or protected person status.

To appeal any of these decisions, you must fill out *Form 2 – Notice of Appeal: Refugee or Protected Person* (see page 1 of this Guide to find out where to get a copy). You must sign and send it to the Tribunal by the deadline explained in section 1.3.

The Tribunal will make a new decision about your claim to refugee or protected person status. It can take into account any changes in your circumstances since the Refugee Status Branch's decision. There will usually be a hearing where you or your representative can tell the Tribunal why you should be recognised as a refugee or protected person.

1.2 What can the Tribunal decide?

After the hearing, the Tribunal will decide either to:

- a) recognise you as a refugee or protected person, or
- b) refuse to recognise you as a refugee or protected person.

1.3 How many days do I have to appeal?

If you are **in detention**, the Tribunal must receive your appeal no more than 5 working days after the Refugee Status Branch sent their decision.

If you are **not in detention**, the Tribunal must receive your appeal no more than 10 working days after the Refugee Status Branch sent their decision. The checklist in Part 2 of this Guide will help you work out exactly when you need to appeal.

See sections 194(2), 195(3), and 386(6) of the Immigration Act 2009.

1.4 Can the Tribunal accept late appeals?

If you send in your appeal late, you need the Tribunal's permission to "appeal out of time". We will send you a letter asking you to explain why your appeal was late. If the Tribunal accepts your reasons, your late appeal is allowed.

See sections 194(3) and 195(4) of the Immigration Act 2009; Immigration and Protection Tribunal Practice Note 2/2010 (Refugee and Protection).

1.5 Will it cost me anything to appeal?

It costs nothing to make a Refugee or Protected Person Appeal. However, there is a NZ\$700 fee if you are making a Humanitarian Appeal as well (see section 1.14).

1.6 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; 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 Bureaux.

These are the only representatives you are allowed to use. If you name someone else as your representative on *Form 2*, 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 1.13 of this Guide for information about changing your representative, or deciding to represent yourself, after you have sent in your appeal.

1.7 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.

1.8 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.

The Tribunal will arrange and pay for an interpreter to help you at the hearing if it decides you need one. You must tell the Tribunal what language and dialect you speak: make sure you fill out Part 3 of *Form 2*.

1.9 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 5 of *Form 2*.

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.

1.10 Can I include other people in my appeal?

No. Each person must fill out a separate appeal form.

1.11 Will I need to speak to the Tribunal?

Yes, in most cases. 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 the Refugee Status Branch provide (see section 1.12 below).

In some situations, the Tribunal may decide not to have an oral hearing. If so, we will write to you.

1.12 What information should I send 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 (see section 3.3), 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:

- a) originals or certified copies;
- b) in English or accompanied by an English translation by a recognised translator ;
- c) 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 these documents to be returned.

1.13 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;
- c) 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;
- d) 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.**

1.14 Can I also make a deportation non-resident (humanitarian) appeal?

If you are making a refugee or protected person appeal, you may be able to make an appeal to stay in New Zealand for **humanitarian** reasons as well. But for this to happen, you must either have a temporary visa or your temporary visa must have expired in the last 42 days.

You must make your humanitarian appeal at the same time as your Refugee or Protected Person Appeal, even if you are lawfully in New Zealand. You will not get another chance to make a humanitarian appeal. The Tribunal must receive both appeals by the deadlines explained in section 1.3.

It costs NZ\$700 to make a humanitarian appeal. You cannot get legal aid for these appeals.

To make a successful humanitarian appeal, you must show the Tribunal that:

- a) there are exceptional humanitarian circumstances that would make it unjust or unduly harsh to deport you from New Zealand; and
- b) letting you stay in New Zealand would not be against the public interest .

To make a humanitarian appeal, fill out *Form 5 – Humanitarian Appeal Against Deportation* as well as *Form 2*. You can download *Form 5* (and *Guide 5* that goes with it) from www.justice.govt.nz/tribunals/ipt or ask the Tribunal for a copy (see the back of this Guide for contact details).

If you are making a humanitarian appeal **and** a refugee and protected person appeal, send your supporting documents for the humanitarian appeal no more than 21 days after sending your appeal.

The Tribunal decides humanitarian appeals in a different way from Refugee or Protected Person appeals. Most importantly, it does not usually hold hearings for humanitarian appeals: most are decided “on the papers” (the documents you and the Refugee Status Branch send the Tribunal). For more information, see the Tribunal’s *Guide 5* and *Form 5*.

Part 2: A step-by-step guide to making an appeal

- Read this Guide carefully.
- Fill out *Form 2 – Notice of Appeal: Refugee or Protected Person*. 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 3 of *Form 2* 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 5.
- Include two copies of any supporting documents (see section 1.12 of this Guide).
- If you are also making a humanitarian appeal, fill out and sign *Form 5* as well as *Form 2*. You will need to send a \$700 fee for the humanitarian appeal.
- 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:
 - no more than 10 working days after the date the Refugee Status Branch sent you their decision OR
 - if you are in detention, no more than 5 working days after the date the Refugee Status Branch sent you their decision.

To work out when you must send your appeal:

- start by checking **the date the Refugee Status Branch sent you its decision**. This is the date that appears on the decision.
- add **7 days**. This allows for the time it took for the decision to reach you.
- then add **10 working days**, or **5 working days** if you are in detention. This is the date the Tribunal must receive your appeal by.
- When you add the 10 or 5 working days:
 - *Don't include* Saturdays and Sundays
 - *Don't include* the following public holidays if they fall on a weekday:
 - 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 (only in 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 us a copy in advance. If you are making a humanitarian appeal at the same time, you must include your credit card details to pay the required NZ\$700 fee. Fax the copy of your appeal form/forms to 64 9 914 5263.

After you have sent the fax, you still need to deliver or post the original appeal form 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 and signed it, and that we have received it by the required 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 the Refugee Status Branch 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. You can correct your appeal and send it in again if there is still time. If it is late, you can ask the Tribunal for permission to make a late appeal (see section 1.4 above).

3.2 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:

- a) **witnesses:** there may be other people who have information that supports your case. If so, we need to know who they are so we can ask them to come to the hearing.
- b) **more information:** although you may have already sent in evidence to support your appeal, the Tribunal may ask for extra evidence (documents or statements).
- c) **submissions:** the pre-hearing process will identify the issues in your case. Before the hearing, you will need to give the Tribunal submissions about each issue. Two copies of all submissions need to be provided to the Tribunal

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

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. You can also bring along supporters, but they cannot take part in the hearing.

Other people who may be at the hearing include:

- a) an interpreter (see section 1.8 above);
- b) any witnesses (if arranged during the pre-hearing process: see section 3.2 above);
See Immigration and Protection Tribunal Practice Note 2/2012 (Refugee and Protection), 10 May 2012, available from <http://www.justice.govt.nz/tribunals/ipt>
- c) sometimes, the Tribunal might ask your permission for other people to attend as “observers” (such as a Refugee and Status Branch official, or students studying refugee law). Observers are not allowed to take part in the hearing.

The public cannot come to Refugee or Protected Person appeal hearings.

At the hearing, the Tribunal will ask you questions about your appeal. Your representative may also ask you questions to help the Tribunal understand your case. After the Tribunal has heard from you and any witnesses, you can raise anything that has not been talked about so far. You or your representative can then make closing submissions.

Hearings on the papers

Instead of a hearing, the Tribunal may decide your Refugee or Protected Person appeal “on the papers” (using only the documents you and the Refugee Status Branch send the Tribunal). It will do this if:

- a) you do not come to your hearing and do not have a reasonable excuse; or
- b) you were interviewed by a refugee and protection officer about your claim and the Tribunal thinks your appeal has no grounds or is an abuse of the Refugee or Protected Person process.

Before deciding your appeal on the papers, the Tribunal will write to you so you have the chance to explain why you think it should be heard orally. If the Tribunal does not agree, it will decide your appeal on the papers.

3.4 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 leave New Zealand before the Tribunal decides your Refugee or Protected Person appeal, it will consider you have withdrawn your appeal if it is about:

- a Refugee Status Branch decision to decline to recognise you as a refugee or protected person; or
- a Refugee Status Branch decision to stop recognising you as a refugee or protected person

The Tribunal will **not** consider you have withdrawn your appeal if it is about a decision to cancel your refugee or protected person status. However, you must let the Tribunal know when you are leaving New Zealand, how we can contact you and when you plan to return. You must still come to your appeal hearing.

3.5 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 the Refugee Status Branch.

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

See section 1.2 for more about the kinds of decision the Tribunal can make.

3.6 What about my Humanitarian Appeal?

If your Refugee or Protected Person Appeal is **successful**, the Tribunal will NOT decide your Humanitarian Appeal. You can apply for a refund of the fee you paid.

If your Refugee or Protected Person Appeal is **not successful**, the Tribunal will then decide your Humanitarian Appeal.

See Guide 5 (A Guide to Lodging a Humanitarian Appeal) for further information.

3.7 After the Refugee or Protected Person Appeal 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

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 1.6 of this Guide).