

Guide 5 - A guide for non-residents making a humanitarian appeal against deportation

Immigration and Protection Tribunal

Using this guide

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

This guide tells you whether you can make an appeal, and how to do it. If you decide to appeal, you must fill out *Form 5 – Notice of Appeal: Humanitarian Appeal against Deportation*. A copy of the form may be downloaded from our website or you can ask the Tribunal for a copy (see the back of this Guide for the contact details).

The Immigration and Protection Tribunal

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

What is a humanitarian appeal against deportation and can I make one?

You can appeal to the Tribunal if you are unlawfully in New Zealand, or you hold a temporary/interim visa, and Immigration New Zealand has decided you are liable for deportation. Use the diagram below to work out if you can appeal.

By appealing, you are asking the Tribunal to review Immigration New Zealand's decision because you think there are humanitarian reasons why you should not be deported.

For your appeal to succeed, you must show the Tribunal that:

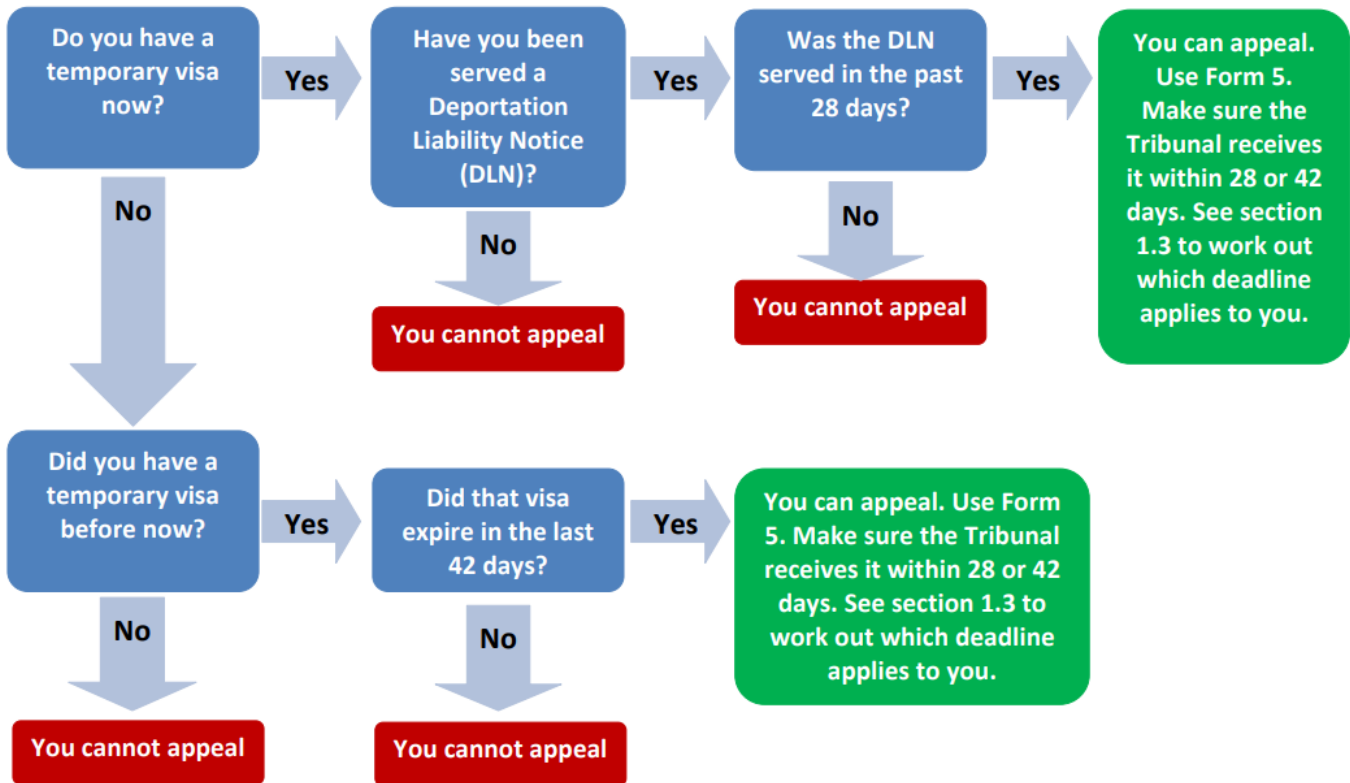
- there are exceptional humanitarian circumstances that would make it unjust or unduly harsh to deport you from New Zealand, and
- letting you stay in New Zealand would not be against the public interest.

See section 207 of the Immigration Act 2009.

You must make your appeal using *Form 5 – Notice of Appeal: Humanitarian Appeal against Deportation*. You must sign your form, and send it to the Tribunal, pay the fee and provide supporting documents.

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 and supporting documents.

Can I make a humanitarian appeal against deportation?



What can the Tribunal decide?

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

- allow your appeal and order Immigration New Zealand to grant you a resident visa or temporary visa lasting up to 12 months; or
- decline (turn down) your appeal. You must leave the country; or
- decline your appeal, but reduce or remove the period you are prevented from entering New Zealand; or
- decline your appeal, but order Immigration New Zealand to delay your deportation so you can get ready to leave the country.

See sections 209, 210, 215, and 216 of the Immigration Act 2009.

How many days do I have to appeal?

The deadline for sending your appeal to the Tribunal depends on why you are liable for deportation. See the following table:

If you are liable for deportation because...	Then the Tribunal must receive your appeal no more than:
you do not hold a visa See section 154 of the Immigration Act 2009.	42 days from the day after you last held a visa. If you have also asked Immigration New Zealand to reconsider its decision declining you a further temporary visa while you were still on a current visa, count the 42 days from whichever of the following days is later: <ul style="list-style-type: none">• the day you became unlawful, or• the day you received confirmation of the Immigration New Zealand decision declining your visa.
you hold a temporary or interim visa which was granted due to an administrative error. See section 155 of the Immigration Act 2009.	28 days from the day you were given the Deportation Liability Notice.
you had a temporary or interim visa using a false identity. See sections 156(1)(a) and 156(1)(b) of the Immigration Act 2009.	42 days. 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 hold a temporary or interim visa and: <input type="checkbox"/> you breached your visa conditions <input type="checkbox"/> you committed a crime <input type="checkbox"/> your character is poor <input type="checkbox"/> you have concealed information <input type="checkbox"/> your circumstances now make you ineligible for the visa See section 157 of the Immigration Act 2009	28 days after you were given the Deportation Liability Notice. This deadline applies even if you have written to Immigration New Zealand within 14 days of receiving the notice, explaining why you should not be deported.

The checklist later in this guide will help you work out exactly when you need to appeal.

How much will it cost me?

An appeal costs NZ\$700.

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

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

- a lawyer; or

- a licensed immigration adviser (they must be licensed with the New Zealand Immigration Advisers Authority; this includes advisers outside New Zealand); or
- someone who is not a licensed immigration adviser but is allowed to represent you under section 11 of the Immigration Advisers Licensing Act 2007. They can be:
 - a person who provides informal immigration advice only sometimes and is not paid for it (such as a family member); or
 - current members of the New Zealand Parliament and their staff
 - 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 5*, 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 this guide for information about changing your representative, or deciding to represent yourself, after you have sent in your appeal.

Can I appeal if I am under 18 years old?

Yes, but a responsible adult must act for you during the appeal. The responsible adult should be one of your parents. If this is impossible (for example, if your parents are not in New Zealand), the Tribunal needs to know so it can appoint a responsible adult to act for you. Tick the relevant box in Step 7 of *Form 5*.

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

See section 375 of the Immigration Act 2009.

Can I include other people in my appeal?

Yes. However, the only people you may include in your appeal are your dependent children (under 18 years old). No other person (such as your husband, wife, adult children) may be included in your appeal.

The dependent children who wish to include in your appeal are those who may be liable for deportation because:

- they have been issued with a Deportation Liability Notice (DLN); or
- they may be liable for deportation because of the circumstances giving rise to your liability for deportation.

A separate fee is not required for those dependent children you include in your appeal if their liability for deportation:

- is linked or connected to your liability, and
- arise from the same facts or circumstances as your liability for deportation.

If you are unsure if you need to pay a separate fee for your dependent children, please contact the Tribunal.

Will I need to speak to the Tribunal?

The Tribunal will probably decide your appeal “on the papers” instead of holding an oral hearing. This means it makes its decision using the written information you have given.

The Tribunal sometimes chooses to hold oral hearings. But you have no automatic right to a hearing and cannot ask for one.

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.

If there is going to be a 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.

What information should I send to the Tribunal?

When you send the Tribunal your appeal form, include any documents and information that will help the Tribunal understand your case and your reasons for appealing.

These supporting documents are very important. If your appeal is going to be decided “on the papers,” the Tribunal will base its decision on them, as well as on your Immigration New Zealand file and your appeal form.

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
- on official letterhead paper, if possible. For example, if you are sending a letter from your child's teacher, ask him or her to write it on the school's stationery.

You must send two copies of all documents.

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

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

What if things change after I appeal to the Tribunal?

You must tell the Tribunal immediately and in writing if:

- there are changes in your life;

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

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

Making your appeal – a checklist

- Read this guide carefully.
- Fill out *Form 5 – Notice of Appeal: Humanitarian Appeal 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.
- Sign the form at Steps 6 and 7.
- Include two copies of any supporting documents.
- Ensure you have paid the fee. To confirm how you pay the application fee, please visit the Ministry of Justice website: www.justice.govt.nz/tribunals/immigration/immigration-and-protection/make-an-appeal/forms-and-fees/
- Deliver or post everything to the Tribunal.

You or a courier can deliver it to:

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

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

Or you can post it to:

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

- Make sure the Tribunal receives your appeal by the deadlines explained earlier in this guide. The Tribunal cannot accept late appeals.
- To work out when you must send your appeal:
 - If you have received a Deportation Liability Notice, start by checking the date you were given the notice.
 - Read the table earlier in this guide to see whether you have 28 days or 42 days to appeal. This is the date the Tribunal must receive your appeal by.
 - When you count the 28 or 42 days:
 - Include Saturdays and Sundays
 - Don't include the following New Zealand public holidays if they fall on a weekday (Monday to Friday):
 - New Year's Day (1 January)
 - Day after New Year's Day (2 January)

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

Fax: +64 9 914 5263

Email: IPT@justice.govt.nz

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

What happens during the appeal?

An appeal to the Tribunal goes through four stages:

- Receiving the appeal
- Preparation
- Making the decision
- After the decision

Receiving the appeal

At this stage, the Tribunal receives your appeal and checks that everything is correct. The Tribunal cannot accept your appeal unless you have used the right form, signed it and included the fee, and that we have received your appeal by the deadline explained earlier in this guide.

If everything is correct and complete, 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 again if there is still time.

Preparation

Send the Tribunal any supporting documents that you have not sent already. Remember: it is your responsibility to give the Tribunal the information it needs to understand and decide your appeal.

Withdrawing your appeal


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

If you want to leave New Zealand before the Tribunal decides your Humanitarian Appeal Against Deportation, the Immigration Act 2009 says you have withdrawn it.

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

Making the decision

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



After the decision

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

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

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

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

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

Immigration and Protection Tribunal

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Auckland
New Zealand

Address: Level 1, 41 Federal Street, Auckland 1010

Phone: 64 9 914 4299

Email: ipt@justice.govt.nz

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