



Asylum and Immigration Tribunal

Guidance Note

November 2007

GUIDANCE FOR MEMBERS OF THE TRIBUNAL ON WITHDRAWALS

1. Rule 17 of the Asylum and Immigration Tribunal (Procedure) Rules 2005 provides as follows:-
 - “(1) An appellant may withdraw an appeal
 - (a) orally, at a hearing; or
 - (b) at any time, by filing written notice with the Tribunal.
 - (2) An appeal shall be treated as withdrawn if the respondent notifies the Tribunal that the decision (or, where the appeal relates to more than one decision, all of the decisions) to which the appeal relates has been withdrawn.
 - (2A) Where an appellant dies before his appeal has been determined by the Tribunal, the Tribunal may direct that-
 - (a) the appeal shall be treated as withdrawn; or
 - (b) where the Tribunal considers it necessary, the personal representative of the appellant may continue the proceedings in the place of the appellant.
 - (3) If an appeal is withdrawn or treated as withdrawn, the Tribunal must serve on the parties a notice that the appeal has been recorded as having been withdrawn.”

This rule also applies in Fast Track appeals.

Rule 17(2A)

2. In the case of the appellant's death before any determination of the appeal has been issued, Rule 17(2A) gives two possibilities. Treating the appeal as withdrawn is the default: sub-paragraph (a). The front flap of the file should be marked: "This appeal is to be treated as withdrawn owing to the death of the appellant" and signed and dated. No determination is issued.
3. If "the Tribunal considers it necessary", the appeal "may" continue, conducted "in the place of the appellant" by "the personal representative of the appellant". In these circumstances, the eventual determination of the appeal will need to indicate the basis for considering it "necessary" and the identity of the person who is treated as the "personal representative".

Other cases

4. In cases not governed by Rule 17(2A), the following procedure applies.
5. Withdrawals in writing are usually processed administratively. In some cases, however, particularly where a withdrawal occurs shortly before a hearing, the notice of withdrawal may come before an Immigration Judge, who should then deal with it in accordance with paragraph 6.
6. If an appellant indicates at a hearing (by himself or a representative) that the appeal is withdrawn, the Immigration Judge should attempt to ensure that the appellant is aware of the consequences of withdrawal and (if the withdrawal is made by the representative) that the latter is instructed to withdraw the appeal. In exceptional circumstances it may be necessary to refuse to accept a purported withdrawal, and proceed to hear the appeal.
7. If the respondent's representative indicates at a hearing that the decision is (or all relevant decisions are) withdrawn, the Immigration Judge should ensure that there is no surviving appealable immigration decision. Presenting Officers have been instructed to withdraw all associated decisions, and should therefore be invited to confirm that this has been done. If there is any surviving immigration decision against which an appeal has been brought, that appeal will need to be heard: s85(1).
8. It is not unknown for there to be some resistance on the part of the appellant to the withdrawal of a decision by the respondent. This is not a matter of choice for the appellant or the Immigration Judge, and not a matter for determination by the Immigration Judge. It is for the respondent to decide whether to withdraw a decision. If all relevant decisions are withdrawn, the appeal is to be treated as withdrawn, as provided in rule 17(2).
9. If an appeal is withdrawn or treated as withdrawn, the Immigration Judge should mark the file accordingly, with a clear signed minute either on the front flap of the file or on the "front sheet" printed for the hearings. The minute should be in the following form:

This appeal was withdrawn orally before me on [date]; OR

This appeal has been withdrawn by letter of [date]; OR

The decision(s) against which this appeal was brought have been withdrawn by the respondent [by letter of [date] or orally before me on [date]].

Signed:

Date:

10. The minute will be the subject of administrative action, and the appropriate notice will be sent out. No determination is issued.

C M G Ockelton
Deputy President
Date: