

insideinformation – fact sheet

Deportation

Information courtesy of Rajan Mawji of Harrison Bundy Solicitors Leeds

Introduction

All foreign national prisoners are liable to deportation.

Deportation is a process where those who have served criminal sentences in the UK can be sent back to the country of which they are nationals, because they are deemed “not conducive to the public good”.

The Criminal Casework Directorate of the UK Border Agency (part of the Home Office) is responsible for deporting foreign nationals.

Deportation is sometimes recommended by the sentencing judge, usually when the crime committed is serious. However the UK Border Agency can also take deportation action where the sentencing judge does not recommend deportation.

The UK Border Agency will start the process by serving a Notice of Liability for Deportation on the prisoner, who will also receive a questionnaire to complete, with an explanation of why he or she should not be deported (see examples below). This will usually happen towards the end of the sentence, but sometimes it can occur earlier, or after the “release” date. The completed questionnaire must be returned to the UK Border Agency within 10 working days.

After receiving the questionnaire the UK Border Agency will make a final decision whether to deport, and the prisoner will be notified with reasons.

A decision to deport will be made by letter entitled “Notice of Intention to Deport”. This should be accompanied by an appeal form. At this point you will have 5 working days to lodge the appeal. Failure to meet the deadline may result in you losing your right of appeal.

Any appeal will be considered by the Asylum and Immigration Tribunal, and if the Tribunal refuse the appeal, the Home Office will issue a final Deportation Order, and proceed to try and effect removal.

Effect of Deportation

A deportation order will remain valid unless it is revoked. A deportee will not be allowed to apply to re-enter the UK for a minimum of 10 years. Any application for Leave to Enter the UK during this period will be refused automatically. This is known as the “Re-entry Ban”.

After the 10 years have elapsed you can apply for the deportation order to be revoked. If successful you will then be entitled to apply to re-enter the UK. However, any further application to re-enter the UK is likely to be seriously prejudiced by a Deportation Order.

Deportation

In what circumstances can deportation be successfully challenged?

There is a presumption in favour of deportation, and the burden is on the deportee to show that deportation should not take place. Any reasons not to deport can be submitted to the UK Border Agency made at any stage before an appeal.

The UK Border Agency is supposed to weigh the severity of the offence with the degree of harm that may affect the deportee and or any family members if he is deported.

Here are some of the factors that must be taken into account when deciding whether or not to proceed with deportation:

In favour of deportation

- The Severity of Offence
- Whether the offence involved violence
- Past Criminal record
- Propensity to re-offend (risk to the community)
- Adult
- Fit and Healthy

Against deportation

- Relatively minor offence
- Minor
- No prior criminal record
- Good Character references
- Very long time living in the UK
- Came to UK as a child
- Strong family connections with the UK
- Detrimental effect on family members in the UK, especially children
- Serious health problems

IMPORTANT NOTICE

Information is given on a strictly 'without-liability' basis, and should be considered for use as guidance only. If you propose taking further action based upon this information you are strongly advised to take further and more specific legal advice before doing so.

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