



BERMUDA

BERMUDA IMMIGRATION AND PROTECTION (APPEAL) RULES 2013

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The Immigration Appeal Tribunal, in exercise of the power conferred by section 13F of the Bermuda Immigration and Protection Act 1956, makes the following Rules:

Citation

1 These Rules may be cited as the Bermuda Immigration and Protection (Appeal) Rules 2013.

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Interpretation

2 In these Rules, unless the context otherwise requires—

“Act” means the Bermuda Immigration and Protection Act 1956;

“appellant” means a person who has filed an appeal pursuant to rule 4;

“Chairman” means the Chairman of the Tribunal and includes the Deputy Chairman when acting in the absence of the Chairman;

“Clerk” means the Clerk of the Tribunal;

“Minister” means the Minister responsible for immigration, or such other Minister to whom responsibilities under the Act have been assigned;

“representative” means a barrister and attorney as provided under section 13E(4) of the Act, and includes a public officer in the case of the Minister;

“Tribunal” means the Immigration Appeal Tribunal established under section 13A of the Act, and includes a panel appointed by the Chairman under section 13B(1) of the Act.

Clerk of the Tribunal

3 The Permanent Secretary of the Ministry responsible for immigration shall designate a public officer to act as Clerk of the Tribunal.

Filing notice of appeal

4 (1) An appeal shall be brought by filing a notice of appeal with the Clerk of the Immigration Appeal Tribunal within the time specified under section 124(1) or (2) of the Act, as the case may be.

(2) When filing a notice of appeal, the appellant shall serve a copy of the notice on the Minister.

(3) The Tribunal may dismiss an appeal where the appellant has failed to file the notice of appeal within the times specified under section 124 of the Act.

Notice of appeal

5 A notice of appeal shall be signed by the appellant, or on behalf of the appellant by his representative, and shall contain the following information—

- (a) the appellant’s name and address;
- (b) the address to which notices and other documents may be served on the appellant in Bermuda, if the appellant is outside Bermuda;
- (c) the name and address of the appellant’s representative;
- (d) the decision of the Minister which is being appealed against.

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Chairman to appoint panel

6 Upon receiving a notice of appeal, the Chairman shall appoint a panel pursuant to section 13B(1) of the Act to hear and determine the appeal.

Notice of grounds of appeal

7 (1) The appellant shall, within 14 days from the date of filing the notice of appeal, file with the Clerk a notice of grounds of appeal.

(2) The notice of grounds of appeal shall state the decision of the Minister which is being appealed against, and set out sufficient particulars to show why the appellant is aggrieved by the decision of the Minister.

(3) The appellant shall, when filing the notice of grounds of appeal, serve a copy of the notice on the Minister.

Filing of response by Minister

8 (1) In every appeal the Minister shall be the respondent.

(2) The Minister shall, within 21 days of being served a copy of a notice of the grounds of appeal, file with the Clerk a response.

(3) The response shall contain the following information—

(a) the Minister's name and address;

(b) the address to which notices and other documents may be served on the Minister;

(c) the name and address of the Minister's representative; and

(d) the Minister's response to the particulars set out in the notice of grounds of appeal.

(4) The Minister shall, when filing a response, serve a copy of the response on the appellant.

Amending grounds of appeal and amending response

9 (1) An appellant may file an application with the Clerk for leave to amend the grounds of appeal, or the Minister may file an application with the Clerk for leave to amend his response.

(2) The Tribunal may give leave to amend, but shall not do so without first giving the other party an opportunity to make representations on the proposed amendment.

(3) Leave to amend may be granted on such terms, including terms as to costs or expenses, as the Tribunal thinks fit.

(4) The Minister may file an amended response where the appellant has been granted leave to amend his grounds of appeal.

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Withdrawal of appeal or opposition

10 (1) The appellant may withdraw an appeal at any time before the hearing by giving notice in writing to the Clerk, and shall at the same time serve a copy of the notice on the Minister.

(2) At the hearing, the appellant may notify the Tribunal that he wishes to withdraw the appeal and thereupon the Tribunal shall bring the hearing to a close.

(3) Where an appeal is withdrawn the appeal is deemed dismissed and the Tribunal shall formally notify the parties to the appeal.

(4) The Minister may at any time withdraw his opposition to an appeal by giving notice in writing to the Clerk, and shall at the same time serve a copy of the notice on the appellant.

(5) The Tribunal shall, where the Minister withdraws his opposition to an appeal, quash the decision of the Minister and direct the Minister in accordance with section 13D(1) or (2) of the Act, as the case may be.

(6) Where an appeal or opposition to an appeal is withdrawn, the Tribunal may give such directions as it thinks fit for the payment of costs or expenses by any party to the appeal.

Chairman may discharge preliminary functions and give directions

11 (1) The Chairman may discharge any preliminary or incidental functions in relation to an appeal.

(2) The Chairman may give such directions as he considers necessary or desirable for the conduct of the appeal, including directions concerning the record of the proceedings.

(3) The hearing or any part thereof shall be in private unless otherwise agreed by both parties.

(4) The Chairman shall approve any written directions agreed by the parties to the appeal, unless such directions are unreasonable or unjust.

(5) Where the parties to the appeal agree, the Chairman may conduct a directions hearing by electronic communications.

(6) Where an appeal is to be determined by hearing, the Chairman shall serve notice on the parties of the date, time and place of the hearing of the appeal.

Tribunal may determine application on written representations

12 (1) If the parties to the appeal agree in writing, the Tribunal may determine an appeal on the basis of written representations.

(2) Notwithstanding paragraph (1), the Tribunal may, at any time before making a determination, direct the parties to appear before it.

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Tribunal may require attendance and evidence

13 (1) The Tribunal may, on the application of the appellant or the Minister, by direction or by notice in writing require any person to attend the hearing and give evidence on oath or affirmation, or to produce any document or to allow for the inspection of any document in that person's custody or under his control which is relevant to the subject matter of the proceedings.

(2) The Tribunal may order that payment be made, in accordance with the Court Fees and Expenses Rules 1972, to a person who is a witness.

(3) Notwithstanding paragraph (1)—

- (a) no person shall be compelled to give any evidence or to produce any document which he could not be compelled to give or produce if the hearing was a proceeding in a court of law; and
- (b) except where the Tribunal otherwise directs, no person shall be obliged to attend and give evidence or to produce any document in obedience to a direction or notice given by the Tribunal unless that direction was given or notice has been served on him not less than 5 days before the day appointed for the hearing.

(4) In exercising the power conferred by paragraph (1), the Tribunal shall take into account the need to protect information which relates to a person who is not a party to the appeal, or which was communicated or obtained in confidence.

(5) The Tribunal may set aside any direction or notice given under paragraph (1) on the application of the person to whom the direction or notice was given.

(6) The Tribunal may supply a copy of any document obtained under this rule to any party to the appeal if that party does not already have a copy of the document.

Procedure during hearing

14 (1) Where the Tribunal requires any witness to give evidence, such evidence shall be given on oath or affirmation, and such oath or affirmation shall be administered by the Chairman.

(2) The Tribunal may admit evidence whether or not the evidence would be admissible in civil or criminal proceedings.

(3) If a party to the appeal fails to appear or be represented at the time and place appointed for the hearing, the Tribunal may proceed with the hearing or adjourn it to a later date.

(4) Where the Tribunal proceeds with the hearing pursuant to paragraph (3), it shall take into consideration any written representation which may have been submitted by either party, whether the written representation was submitted in accordance with these Rules or otherwise.

(5) At the hearing, the Tribunal may adjourn the hearing from time to time, and if the date, time and place of the adjourned hearing are announced before the adjournment, no further notice is required.

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Procedure after hearing

15 (1) The Tribunal shall, after the close of a hearing, notify the parties of its determination and give a statement of its reasons in accordance with section 13D(3) of the Act.

(2) The Tribunal may arrange for the publication of its determination and a statement of its reasons, but in doing so shall have regard to the desirability of safeguarding confidential information given to the parties, or information which was communicated or obtained in confidence, or information relating to any person who is not a party to the appeal, or the name of the appellant, and for that purpose may make any necessary amendments to the text of its determination and statement of reasons.

Costs

16 (1) Any costs or expenses which the Tribunal directs to be paid under section 13F(1) of the Act and required to be taxed shall be taxed by the Registrar of the Supreme Court.

(2) A direction by the Tribunal under section 13F(1) of the Act in respect of the payment of costs or expenses by a party to the appeal shall, on application being made to the Supreme Court by the party to whom costs have been directed to be paid, be enforceable as if the party had obtained a judgment of that Court in his favour.

Time and miscellaneous powers

17 (1) Where the time prescribed by these Rules for doing any act expires on a Saturday, Sunday or public holiday, the act shall be in time if done on the next working day.

(2) A party to an appeal may file with the Clerk an application requesting an extension of the time referred to under rule 7 ("Notice of grounds of appeal") or rule 8 ("Filing of response by Minister").

(3) The Tribunal may, after consulting with the other party to the appeal, grant an application filed under paragraph (2) on such terms, if any, as it thinks fit.

(4) An application filed under paragraph (2) may be granted after the time specified in rule 7 or 8 has expired.

(5) The Tribunal may, after consulting with the parties to the appeal, postpone the date appointed for the hearing or alter the place appointed for the hearing.

(6) Where the hearing is postponed, or the place for the hearing is altered, the Tribunal shall notify the parties to the appeal in writing of the revised arrangements.

Service of notices and other documents

18 (1) Any notice or other document to be filed or served on any person for the purposes of an appeal may be filed or served—

(a) by delivering it to that person—

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- (i) in the case of the Tribunal, by leaving it at the office of the Clerk of the Immigration Appeal Tribunal, the Department of Immigration, Hamilton, Bermuda;
 - (ii) in the case of the appellant or the appellant's representative, at the address provided in the notice of appeal, or such other address as may subsequently be notified to the Clerk;
 - (iii) in the case of the Minister, by leaving it at the office of the Minister, or at the office of the Minister's representative at the address provided in the response, or such other address as may subsequently be notified to the Clerk;
 - (iv) in the case of any other person, at the last known address of the person, or the person's representative; or
- (b) by electronic communication which produces a document containing the text of the notice or document.

(2) Where a notice or document is served on the representative of the appellant or the Minister, the notice or document is deemed to be served on the appellant or the Minister.

Irregularities

19 (1) Any irregularity resulting from failure to comply with any provision of these Rules before the Tribunal has determined the appeal shall not of itself render the proceedings void.

(2) Where any such irregularity comes to the attention of the Tribunal before making its determination, the Tribunal may, and shall if it considers that any person may have been prejudiced, take such steps as it thinks fit before making its determination to cure the irregularity.

(3) Clerical mistakes in any document recording a decision of the Tribunal, or errors arising in such a document from an accidental slip or omission, may be corrected by the Chairman under his hand.

Made this 28th day of February 2013

Chairman
Immigration Appeal Tribunal