



BERMUDA

SUPREME COURT (BERMUDA IMMIGRATION
AND PROTECTION) (APPEALS) RULES 2018

BR 41 / 2018

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The Chief Justice, in exercise of the power conferred by section 62 of the Supreme Court Act 1905, makes the following Rules:

Citation

1 These Rules may be cited as the Supreme Court (Bermuda Immigration and Protection) (Appeals) Rules 2018.

Interpretation

2 In these Rules, unless it is expressly provided or required by the context—

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

“appeal” includes an application for an extension of time within which to appeal;

“appellant” means—

- (a) a person appealing under section 13G of the Act against a decision of the Tribunal; or
- (b) a person appealing under section 71C of the Act against a decision of the Chief Immigration Officer,

and includes his legal or other representative;

“Chairman” means the Chairman of the Tribunal appointed under section 13A(3) of the Act, and includes the Deputy Chairman when acting in the absence of the Chairman;

“Chief Immigration Officer” has the meaning given under section 2 of the Act;

“the Court” means the Supreme Court;

“Judge” means a judge of the Supreme Court;

“record” means the aggregate of documents (in electronic or hard copy form) relating to an appeal (including any pleadings, the documents produced in evidence, the notes of evidence and the decision appealed against) proper to be laid before the Court on the hearing of an appeal;

“Registrar” means the Registrar of the Court and includes the Assistant Registrar of the Court, and any officer of the Court exercising functions analogous to those of the Registrar of the Court;

“Registry” means the Registry of the Court;

“respondent” means—

- (a) any person, other than the appellant, who was a party to the proceedings before the Tribunal under section 13D of the Act; or
- (b) the Chief Immigration officer, where a person is appealing under section 71C of the Act;

“Rules” means these Rules and includes the Forms appended to these Rules;

“Tribunal” means the Immigration Appeal Tribunal established under section 13A of the Act.

Notice of appeal

3 (1) A notice of appeal shall be in Form 1 of the Schedule or as near thereto as circumstances admit.

(2) The notice of appeal shall be signed by the appellant and shall—

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- (a) set forth specifically and concisely the grounds of appeal and clearly state each error, on the point of law or fact or both, complained of;
 - (b) state whether the whole or part only of the decision (in the latter case specifying such part) of the Tribunal or the Chief Immigration Officer, as the case may be, is complained of;
 - (c) state the specific nature of the relief sought;
 - (d) state the name and address of the respondent(s);
 - (e) be endorsed with the address for service of the appellant.
- (3) The notice of appeal shall be delivered to the Registry—
- (a) with respect to an appeal against a decision of the Tribunal, within 21 days after receipt of notification of the decision;
 - (b) with respect to an appeal against the imposition of a civil penalty, within the time specified in the decision notice given by the Chief Immigration Officer under section 71B(3) of the Act,

or, with respect to subparagraphs (a) and (b), within such longer period as the Court may allow.

(4) A copy of the notice of appeal shall be served by the appellant on each respondent and on the Tribunal or the Chief Immigration Officer, as the case may be.

(5) An appellant may apply to the Court in Form 2 of the Schedule to extend the period within which to lodge a notice of appeal.

(6) Except with the leave of the Court, no grounds, other than those stated in the notice of appeal or any amended notice, may be relied upon by the appellant at the hearing; but the Court may amend the grounds so stated on such terms as it thinks just to ensure the determination on the merits of the real question in controversy between the parties.

(7) No ground which is vague or general in terms or which discloses no reasonable ground of appeal shall be permitted save the general ground that the decision is against the weight of the evidence; and any ground of appeal or any part thereof which is not permitted under this rule may be struck out by the Court of its own motion or on application by a respondent.

Record

4 (1) The Chairman or the Chief Immigration Officer, as the case may be, shall compile the record and forward it to the Registrar within 14 days of the date of service of the notice of appeal on the Tribunal or Chief Immigration Officer, or within such longer period as the Court may allow.

(2) The Court shall have power to supplement the record by such other evidence or statement of what occurred before the Tribunal or the Chief Immigration Officer, as the case may be, which the Court may deem sufficient.

(3) The power under paragraph (2) shall only be exercised where—

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- (a) the supplementary material is sought to be adduced by consent of all parties affected by it;
- (b) it appears to the Court that the record should be supplemented to ensure the fair hearing of the appeal.

Notice of hearing

5 (1) After transmission of the record to the Registrar pursuant to rule 4, the Registrar shall enter the appeal, fix a day for the hearing of the appeal and give to the parties not less than seven days' notice of the date on which the appeal will be heard.

(2) Notwithstanding paragraph (1), the parties may accept such shorter period of notice as may be mutually agreed.

Control by Supreme Court

6 After an appeal has been entered by the Registrar and until it has been finally disposed of, the Court shall be seized of the whole of the proceedings as between the parties to the appeal, and every application therein shall be made to the Court.

Powers of Court on appeal

7 (1) In addition to the powers conferred in the foregoing rules, the Court when hearing an appeal shall have the following powers.

(2) The Court shall have power to draw any inferences of fact which might have been drawn in the proceedings out of which the appeal arose.

(3) The Court may make any decision which ought to have been made by the Tribunal or the Chief Immigration Officer, or may remit the matter with the opinion of the Court for rehearing and determination by the Tribunal or the Chief Immigration Officer.

(4) The Court may, in special circumstances, order that such security shall be given for the costs of the appeal as may be just.

Judgment

8 (1) The judgment of the Court upon an appeal shall, unless the Court directs otherwise, be pronounced in open court either on the hearing of the appeal or at any subsequent time of which notice shall be given by the Registrar to the parties to the appeal.

(2) Every judgment of the Court shall be embodied in an order.

Costs

9 (1) Where the costs of an appeal are allowed, they may either be ordered to be taxed or be summarily assessed at the time when judgment is given.

(2) Where the costs are ordered to be taxed pursuant to paragraph (1), the provisions of Order 62 of the Rules of the Supreme Court 1985 apply mutatis mutandis.

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Court fees

10 The fees prescribed in Part I of the Schedule to Order 62 of the Rules of the Supreme Court 1985 shall apply to appeals under the Act.

Application of Supreme Court Rules

11 The Rules of the Supreme Court 1985 shall apply mutatis mutandis in respect of matters not expressly provided for in these Rules, in so far as they are not inconsistent with the provisions of the Act or these Rules.

Commencement

12 These Rules come into operation on 1 June 2018.

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SCHEDULE
FORMS

FORM 1

(rule 3(1))

NOTICE OF APPEAL

BETWEEN

[BLANK]

Appellant

and

[BLANK]

Respondent

NOTICE OF APPEAL

TAKE NOTICE that the Appellant being dissatisfied with the whole decision/that part of the decision more particularly stated in the decision of the [Immigration Appeal Tribunal/Chief Immigration Officer*]* dated the [blank] day of [blank] 20 [blank] doth hereby appeal to the Supreme Court upon the grounds set out in paragraph 3 and will at the hearing of the appeal seek the relief set out in paragraph 4.

AND the Appellant further states that the name and address of the respondent(s) are those set out in paragraph 5.

- 2 Part of decision complained of:
 - (a)
 - (b)
 - (c)
- 3 Grounds of appeal:
 - (a)
 - (b)
 - (c)
- 4 Relief sought from the Court:
- 5 Respondent(s) name and address:
 - (a)
 - (b)
 - (c)

Dated this [blank] day of [blank] 20 [blank]

Appellant or his legal or other representative,
whose address for service is:

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* Delete as applicable

FORM 2

(rule 3(5))

APPLICATION FOR EXTENSION OF TIME FOR APPEALING

BETWEEN

[BLANK]

Appellant

and

[BLANK]

Respondent

SUMMONS

Let C. D. of [blank] attend before the Judge in Chambers (or the Registrar) at the Supreme Court in Hamilton, Bermuda, on [blank] day, the [blank] day of [blank] 20 [blank] at [blank] o'clock, on the hearing of an application by the Appellant for an Order that:

[blank]

Dated the [blank] day of [blank] 20 [blank]

This summons was taken out by [blank] of [blank] the Appellant/attorney/representative* for the said Appellant whose address is [blank]

* Delete as applicable

Made this 16th day of May 2018

Chief Justice
The Supreme Court of Bermuda

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[Operative Date: 01 June 2018]