



Dame Diana Johnson MP
Chair, Home Affairs Committee
House of Commons
London
SW1A 0AA

5 June 2023

Dear Dame Diana,

Restart of Section 94B ‘deport first, appeal later’ appeal certification

I am writing to advise you that from today the Home Office is restarting the use of certification under section 94B of the Nationality, Immigration and Asylum Act 2002. The effect of certification under section 94B is that any appeal against the refusal of a human rights claim can only be made or continued while the person is outside the UK and the person can be removed before their appeal is heard.

A human rights claim can only be certified under section 94B if requiring the person to pursue any appeal from outside the UK would not be unlawful under section 6 of the Human Rights Act 1998, including, in particular, that the person being removed must not face a real risk of serious and irreversible harm before the appeal process is exhausted.

The power to certify human rights claims where the person is liable to deportation was enacted in the Immigration Act 2014. The Immigration Act 2016 extended the power so that any human rights claim could be certified. The use of the power has been suspended since the Supreme Court’s ruling in *Kiarie and Byndloss*, [2017] UKSC 42, which found that it was a breach of section 6 of the Human Rights Act 1998 to certify human rights claims where the claimant wished to give oral evidence in their appeal but were not able to do so from outside the United Kingdom.

In order to comply with the judgment in *Kiarie and Byndloss*, any appeal from outside the United Kingdom following section 94B certification will normally require facilities for any person to give evidence in their out of country appeal should they wish, including a room which is sufficiently

private and has sufficient internet speeds to support a sustained high quality video call of the necessary duration. These facilities are being provided. In addition, the Foreign, Commonwealth & Development Office (FCDO) will confirm that the appropriate authorities in the countries from where video evidence is going to be given have no objections to the use of a video link from their territory by their citizens or residents to provide evidence and that local law does not prohibit it.

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From today my intention is that any nationality will be eligible for consideration for certification under section 94B, subject to confirmation by the Home Office in each case of the position of the receiving country's authorities on video link evidence and the availability of a suitable overseas video facility. Initially consideration will be focussed on the appeals of Foreign National Offenders. We will not use section 94B certification in relation to nationals of countries where it is not possible to provide facilities for video link evidence in cases where live evidence is necessary.

Since use of section 94B was suspended in 2017, my officials have successfully provided video facilities for over 30 legacy section 94B appeal hearings where the foreign national offender had already been deported. The Tribunal has found the video links we have used to be effective and we will be using the same processes.

My department will take the necessary steps to enable certification under section 94B to be considered for nationals of every country where the establishment of the necessary facilities is reasonably achievable, and supporting the operational delivery of video links in section 94B appeals as required.

We will be engaging with countries which have not yet clarified their stance on allowing video link evidence, or which require the signing of a new agreement with the UK in order to allow video link evidence to be provided to tribunal proceedings in the UK, prioritising engagement where it is likely to have most benefit for section 94B certified appeals.

Section 94B was passed by Parliament with the intention of ensuring that those whose human rights claims were refused would not automatically be able to remain whilst building new claims or strengthening existing claims while their appeal was being considered. I believe now is the right time to resume the use of the certification power. The Home Office will publish revised guidance for caseworkers.

I am placing a copy of this letter in the Libraries of both Houses of Parliament.



Rt Hon Suella Braverman KC MP
Home Secretary