



PRESIDENT OF THE FIRST – TIER TRIBUNAL  
IMMIGRATION AND ASYLUM CHAMBER

**PRESIDENTIAL GUIDANCE NOTE No 2 of 2024:**

**TAKING EVIDENCE FROM ABROAD**

*This guidance updates and replaces Presidential Guidance Note No 4 of 2022, which shall no longer have effect from the date of this document. It follows new arrangements agreed by the HM Courts and Tribunals Service and the Foreign, Commonwealth & Development Office.*

**INTRODUCTION**

1. This Practice Guidance is issued to assist with the procedure when a person wishes to participate in a hearing by video from outside the United Kingdom.
2. It has the following sections:

Part 1 – Witnesses Based Abroad

Part 2 – Consideration of Delay

**PART 1: WITNESSES BASED ABROAD**

*The requirement for permission in all cases*

3. Subject to paragraph 6 below, where a party wishes to rely on live oral evidence by video from abroad, the person seeking to rely on that evidence will, in all cases, need permission from the Tribunal<sup>1</sup>. Permission is required even where no legal or diplomatic objection has been raised by the country in question.
4. The obligation to obtain judicial permission to adduce oral evidence from abroad rests on the person wishing to rely on that evidence.
5. When considering whether to grant permission, the Tribunal will need to be satisfied that the country in question consents and that no legal or diplomatic barriers prevent the witness from giving evidence in the territory in which they are situated. Each

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<sup>1</sup> This applies to all nation States including those formerly covered under EU agreements

case will be considered upon its own merits. It shall remain a matter of judicial discretion by reference to the Overriding Objective<sup>2</sup> whether such oral evidence should be admitted.

### *Cases where permission is not required*

6. Permission is not required where an individual wishes to give video evidence from within the United Kingdom, i.e. anywhere in England, Wales, Scotland or Northern Ireland; Crown Dependencies like Jersey, Guernsey or the Isle of Man; or British Overseas Territories: Anguilla, Bermuda, British Antarctic Territory, British Indian Ocean Territory, Cayman Islands, Falkland Islands, Gibraltar, Montserrat, Pitcairn, Henderson, Ducie and Oeno Islands, St Helena, Ascension and Tristan da Cunha, South Georgia and the South Sandwich Islands, the Sovereign Base Areas of Akrotiri and Dhekelia, Turks and Caicos Islands and the British Virgin Islands.
7. There is no requirement to seek permission from the Tribunal in relation to the production of a written witness statement or documentary evidence from abroad.
8. This guidance does not affect the obligations upon the Secretary of State for the Home Department in appeals certified by them under section 94B of the 2002 Act; they will continue to provide the necessary assistance for an appellant to give evidence from outside the United Kingdom, or facilitate their return to be able to pursue their appeal in-country, in accordance with the guidance to be found in [R \(Kiarie & Byndloss\) v Secretary of State for the Home Department \[2017\] UKSC 42](#).

## **THE PROCEDURE**

### *Starting point*

9. The appellant should check the FCDO website for information about whether a country has given permission for the use, in Tribunal proceedings, of live video evidence taken from within their jurisdiction. This is published on the FCDO's website using the following link: <https://www.gov.uk/guidance/taking-and-giving-evidence-by-video-link-from-abroad>.
10. If a country has expressly refused permission, then oral evidence from that country cannot be taken.
11. In all other cases the person wishing to rely on the oral evidence from abroad should apply for permission from the Tribunal, on notice to the Respondent. This application should be made when the ASA and appeal bundle is submitted. Failure to notify the Tribunal of a witness wanting to give evidence from abroad in sufficient time may result in the Tribunal refusing to admit the evidence altogether.

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<sup>2</sup> Rule 2 of the [Tribunal Procedure \(First-tier Tribunal\) \(Immigration and Asylum Chamber\) Rules 2014](#)

12. The application should be supported by:

- (a) the name of the party and case number;
- (b) the name of the proposed witness;
- (c) the country from which they will be giving evidence;
- (d) evidence of their citizenship or residence in that country;
- (e) the Time Zone applicable, and thus the time difference between the United Kingdom and the country in which the witness is situated;
- (f) confirmation that the proposed witness has the ability to access the appropriate hearing platform (see <https://www.gov.uk/guidance/what-to-expect-when-joining-a-telephone-or-video-hearing>);
- (g) an explanation as to why the evidence is necessary by reference to the disputed issues.

13. In their review, the respondent must include whether (i) the witness evidence in question is in dispute and (ii) cross-examination will be necessary.

14. If the evidence is not in dispute, and the respondent does not intend to cross examine the witness, then the witness evidence can be read and there is no need to call the witness to give oral evidence. For the avoidance of doubt, where there is no review or the review fails to address the issue, the Tribunal will proceed on the assumption that the respondent does not dispute the evidence of that witness.

15. Where the respondent has indicated that the evidence is in dispute, the following procedure applies:

*In the case of consenting countries*

16. The Tribunal may grant permission to hear oral evidence from abroad where a country has consented.

*Countries that have specified individual permission is required or countries that have not replied to the FCDO.*

17. The FCDO may be able to make additional enquiries with the country in question ("Country X"). There is a fee for this service. The Tribunal will direct the requester make an application to the Taking of Evidence from Abroad Unit ('ToEU') at [toe.enquiries@fcdо.gov.uk](mailto:toe.enquiries@fcdо.gov.uk). The ToEU will need the relevant details of the case including the date of the hearing, whether the witness is a resident or citizen of Country X, and the type of Tribunal. The ToEU will contact the requester directly if further details are required.

18. The ToEU will send details on how to pay the Consular Fee, currently £150, for the service. Once the ToEU receive payment confirmation, they will send the requester a holding reply to acknowledge receipt of payment and advise them of next steps.

19. The ToEU will contact the Embassy or High Commission who will check with the Ministry of Foreign Affairs ('MFA') if the Government of Country X has any objection to residents or nationals of Country X providing evidence by video link from Country X to administrative tribunals in the UK. The MFA will be given a deadline of six

weeks to respond. The Tribunal will consider the application as soon as possible after receipt of the ToEU information.

20. When considering the application for permission to rely on oral evidence from a person abroad, the Tribunal shall only rely on current information provided by the ToEU.

*If permission is refused*

21. If the ToEU notify the requester that permission is refused, then the Tribunal must refuse to admit the proposed oral evidence.

*If permission is granted in whole or in part*

22. If the ToEU notify the requester that permission has been granted then the Tribunal may give permission for that evidence to be taken. If the country in question has offered a conditional grant of permission, then the Tribunal may only admit the proposed oral evidence if satisfied that the party in question has met the conditions imposed.

*If more information is required*

23. If the country in question requires more information, the Tribunal will consider whether in the circumstances it is appropriate for further time to be given by reference to the Overriding Objective.

*If there is no response within 6 weeks*

24. If the Government of Country X does not respond by the six-week deadline, then the ToEU will inform the requester that given the lack of response, the FCDO recommends that the taking of evidence should not take place at this time. The requester should then inform the Tribunal.
25. In such cases, the Tribunal should proceed on the basis that it cannot be satisfied that permission has been given and should refuse to admit the oral evidence.

*Practical arrangements when hearing evidence from abroad*

26. The appellant should ensure the witness is available to participate in the hearing at the appointed time. The appellant will be responsible for providing the Tribunal with the witness' email address so that joining links can be sent to the witness.
27. The Tribunal shall only use approved platforms to take oral evidence from abroad by video link, such as the Video Hearing Service or Cloud Video Platform. More information on these platforms may be obtained from <https://www.gov.uk/guidance/what-to-expect-when-joining-a-telephone-or-video-hearing>.

## **VISITORS, NON-CITIZENS AND NON-RESIDENTS OF AN OVERSEAS STATE**

28. The procedure set out in paragraphs 17 to 20 should be followed where non-residents or non-citizens of the country in question want to give evidence. Examples include British citizens on holiday. If a British citizen is working abroad, they may have a visa that could possibly mean they are considered a temporary resident, however this would depend on the country in question.
29. The parties should consider whether other procedural mechanisms may be more appropriate such as postponing the hearing or listing on a date when the witness is present in the UK.

## **PART 2: IN ALL CASES - DELAY**

30. There may be delay in proceedings if the FCDO needs to contact an overseas Embassy or High Commission. It will always be a matter for judicial discretion by reference to the Overriding Objective as to whether the listing of the application or appeal should be refused or delayed to await that reply.
31. The Tribunal will balance the prospect of delay while seeking to ensure that insofar as is reasonably practicable, the best evidence is before the Tribunal in accordance with the Overriding Objective set out in Rule 2 of the Tribunal Procedure Rules.
32. The following are likely to be relevant considerations for the Tribunal:
- (a) whether it is necessary for the witness to give oral evidence by reference to the disputed issues;
  - (b) whether the witness could address the disputed issues adequately by providing written answers to questions posed by the opposing party; and
  - (c) whether delay could be avoided altogether by the witness travelling to a third country where it is known there are no diplomatic objections to the giving of oral evidence.



Judge M PLIMMER  
President  
First- Tier Tribunal  
(Immigration and Asylum Chamber)

13 September 2024