

Summary: Deportation in practise means the forced removal of a non national from the State and is generally used in respect of non-EEA nationals. The deportation of non-EEA nationals is determined by Section 3 of the Immigration Act 1999. We have frequently assisted clients with the Section 3 process and also been engaged in High Court litigation to prevent removal of non-EEA nationals.

Every non-national is responsible for maintaining their Permission to Remain in the State and non-nationals are individually responsible for not allowing this permission to lapse. When it does lapse, their status is called “undocumented” or “irregular”.

Such undocumented persons will often be directed by an immigration officer to make an application to the Minister for Justice and Equality to extend or renew their permission to remain. If this application is unsuccessful, or if the non EEA national does not submit the application and remains in the State unlawfully, their file will be passed internally within the Department to the Repatriation Section. The Repatriation Section will then issue a Notification of Intention to Deport pursuant to Section 3 of the Immigration Act 1999.

The Section 3 letter provides the Applicant with 4 options and a deadline of 15 days within which to respond. The options are as follows:

Consent to a Deportation Order

Leave the State voluntarily within a certain period

Submit a Humanitarian Leave to Remain Application (HLTR)

Submit a Subsidiary Protection Application (SP)

Most people will submit one or both of the Humanitarian Leave to Remain Application and Subsidiary Protection applications. These applications are described in further detail below.

From our own experience, the average processing time for the HLTR application is between two and three years, and a SP application approximately 18 months. However, in some cases applications can be determined in much shorter time frames. During the processing time, the Applicant is permitted to remain in the State as an undocumented person. They are not allowed work or claim welfare entitlements. If the Applications are unsuccessful, a Deportation Order will be issued against the Applicant. If successful, the Applicant will be given permission to remain usually on stamp 3 or stamp 4 status.

A non EEA national may also face deportation if they have committed a criminal offence or if there is a court recommendation for their deportation. However, notice of the intention to issue the Deportation Order must be given to the applicant.

It is a criminal offence to contravene the provisions of a Deportation Order. For example, it is often a condition of a Deportation Order that the Non National must attend at regular intervals at the GNIB. If the non national does not do so, they become classified as an evader and become liable for arrest.