– Chapter 2 –

Living the Law

This chapter is centred on the encounter of foreign nationals, as lay people, with legal institutions, drawing on ethnographic research conducted at the then Asylum and Immigration Tribunal (AIT) in London. It examines hearing proceedings from an ethnographic and not a legal perspective. Here the interest is not located in issues of sentencing or case law, but rather on how deportation appeals are lived and understood by appellants.

Looking at appeal hearings is a vital component in understanding the effect of deportation policies in the UK. Appealing against deportation was one of the few options available to a migrant subject to deportation. In this setting, the host state takes the form of the Home Office as the respondent and the tribunal as the adjudicator. The hearing room becomes the stage where the policy is both challenged and reinforced – it is the site of contestation where foreign nationals can fight for their right to stay, thus forming part and parcel of the experience of deportation. The tribunal is also a site of negotiation whose procedure, setting and language are not familiar to most lay people. Appellants are thus not fighting on their own terms – their lives are shaped to fit the parameters of a good legal case and discussed in a legal language that is not immediately accessible to them. This appeals process nevertheless influences appellants' perceptions of justice. The tribunal, even if independent, is still perceived as a state institution, constrained by the laws of the country and the policies of the respondent.

In the first two sections of this chapter I explore what Achermann (2012) has termed the 'struggle over exclusion', that is, the decision-making process in which foreign-national offenders and their host state dispute whether the former ought to be excluded or not from

the latter's territory. I first review the grounds available to contest deportation at the time of my research and provide an overall view of the appeal system, and then detail appellants' efforts to make their case as strong as possible. The third section is devoted to understanding how the appeal hearing is experienced and understood by appellants and their families.

The Right to Appeal

Immigration policy and legislation in the UK has changed significantly since field research in 2009. These changes have sought to curtail appeal rights, reduce access to legal aid and increase state powers with respect to deporting people. At the time of writing, the latest development concerned the Immigration Act 2014. Among its many provisions, and of particular importance to foreign-national offenders, the Immigration Act stipulates that 'harmful' individuals may be deported prior to their appeal unless their removal results in serious harm such as death and torture. Such individuals may still file for an appeal, but only from abroad. The act aims, in the Home Office's words, to 'end the abuse of Article 8 of the European Convention on Human Rights – the right to respect for family and private life'.[1]

The immigration tribunal system too has seen multiple reforms.[2] At the time of research, immigration appeals were heard at the single-tier Asylum and Immigration Tribunal (AIT),[3] but this subsequently reverted to a two-tier system in February 2010. It is important to note that the process here described refers to policy and the appeals system as it stood in 2009, which differs in many respects from current procedures.

Prior to the passing of the Immigration Act 2014, whether before or after being served with a notice of decision to deport by the immigration authorities, foreign-national offenders liable to deportation were faced with four options: leave voluntarily; appeal the decision to deport; go underground; or, not act on it and wait until eventually being removed under deportation provisions (or not). These four options were not necessarily mutually exclusive actions. A foreign national could choose to appeal only to subsequently go underground when the appeal was dismissed and there were no further appeal rights, or they could abandon the appeal and leave voluntarily before the deportation order was signed. Leaving the country voluntarily, at their own expense, would ensure that they were not restrained by a ban on re-entry to the UK, as long as a deportation order had not been

signed before departure. However, it is likely that upon attempting to re-enter the country, the grounds for the decision to deport will be used by immigration authorities to refuse leave to enter (Macdonald and Toal 2008). As such this was not an option legal representatives were likely to recommend when there were grounds for appeal. Further, if the decision to deport was made under the provisions for automatic deportation, a deportation order could be signed while the appeal was pending, thus negating the 'advantage' of leaving voluntarily for, if nothing else, foreign nationals save the plane fare if deported under removal directions.

A decision to deport could be appealed in-country when there was an asylum or human rights claim. An appeal is a public hearing for foreign nationals at which they can present their case (against a decision to deport, or any other appealable immigration decision) to an independent immigration judge or panel of judges. Immigration appeals had suspensive effects, meaning that they entailed a prohibition on the removal of the appellant from the UK until all rights to appeal had been exhausted.[4] Immigration appeals were also subject to the one-stop appeal principle, which ensured that all grounds of appeal were heard in a single appeal. In a deportation appeal, for instance, it was not uncommon for foreign nationals to include an asylum claim based on Article 3 of the European Convention on Human Rights (ECHR) along with Article 8 on the right to respect for private and family life. Both issues were dealt with simultaneously.

The immigration tribunal system is administered by the Tribunals Service, an agency of the Ministry of Justice. The AIT had several hearing centres throughout the country. Information for this chapter is mostly derived from observations at Taylor House in London. Hearings were also observed at the Court of Appeal and at Field House, the main centre in London dealing with reconsideration hearings.

The Immigration Appeals System

The immigration appeals system was hardly simple to understand and navigate. As Macdonald and Toal state:

> Rights of appeal against immigration and asylum decisions have undergone great changes in the last few years…. What we are left with is a somewhat complicated and cumbersome system of one-tier appeals by one-to-three-judge panels, review and onward appeal which will require very careful calibration to achieve the desired combination of efficiency and fairness. (Macdonald and Toal 2008: 1341)

When deciding to deport a migrant, the Secretary of State for the Home Office, through the appropriate immigration authority, had to serve a notice of decision to deport. This notice included the reasons for the decision, the country where the migrant was to be sent, the migrant's rights of appeal and how to exercise these rights. For all research participants, receiving the notice of decision to deport was not only unexpected but also confusing as most, possessing leave to remain, were not aware that they were liable to deportation.

When his mother passed away in Uganda, Tony came to the UK at the age of 10 to live with his father. He was granted indefinite leave to remain and had lived in the country ever since, never returning to Uganda. Having spent most of his formative years in UK, Tony felt at home there. When aged 19 he was convicted of robbery and spent eighteen months in prison. Upon the end of his sentence Tony was not released from prison. Instead he was served with a notice to deport. He was shocked at being kept in prison and confused about what was going on:

> The Home Office send me a letter saying because my crime was serious it was conducive to the public good, they gave me notice of deportation order, so I'm thinking 'what?' Because I was confused, I didn't come in the back of a lorry, I was young and didn't know anything about immigration or anything like that.

For Maria, receiving notice of deportation was even more surprising. Maria had arrived in the UK with her parents and siblings at the age of four, fleeing their war torn country in Latin America. In her thirties Maria served a four-year sentence for a drug-related offence. In prison, she fought her addiction and 'straightened' her life, to use her words. Upon release from prison she reconnected with her child and family, and volunteered in a community organisation that provided support to female prisoners. Eight years after her release, at the age of 47, she was puzzled when the notice to deport came through her door.

A foreign national had ten business days (five, if in detention) to serve a notice of appeal to the AIT. The notice of appeal included the personal and contact details of the appellant, the details of their legal representative, the grounds for appeal (which could be amended at a later stage subject to the AIT's permission), the reasons in support of those grounds, a list of the documents the appellant would rely on during the appeal, and a copy of the notice of decision to deport. The AIT then served a copy of the notice of appeal on the respondent – the Home Office – who in turn had to serve the AIT and the

appellant and their representative with all the documentation related to the case in hand. At this point the AIT could hold a case management review hearing to decide on directions to the appeal hearing – matters such as the duration of the hearing, the panel composition, the type of evidence accepted (oral and/or documentary), the issues to be addressed, the time parties needed to prepare for the full hearing (Clayton 2008; Macdonald and Toal 2008).

A notice of hearing would then be served by the AIT to all parties and representatives stating the date, time and place of the hearing. Five days prior to the hearing, each party had to provide the AIT and the opposing party with the documentation that was to be relied on during the appeal. At the hearing, both parties had the opportunity to present a claim and give evidence in support of that claim. The findings of the AIT and its decision to allow or dismiss the appeal are called a determination. The determination was served to both parties in writing within ten days of the hearing (this period was extended if there was an asylum claim) and included a statement of the issues that were addressed, what the AIT decided about them and the evidence that led to that decision. Either party could then apply to the High Court for a reconsideration order on an error of law.[5] This application was documentary in nature only. If successful, the High Court would instruct the AIT to hold a reconsideration hearing, at which it heard the appeal again, or it could refer the case directly to the Court of Appeal for a substantive hearing. The outcome of the reconsideration hearing could in turn be appealed on a point of law to the Court of Appeal. When appeal rights were exhausted, either party could file for a judicial review on an error of law to the Administrative Court.

The appeals could thus span a long period of time. Tony navigated this maze of appeals for eight years before he won his case – almost a decade spent waiting for a decision. This was the better part of his twenties, where he was not given permission to work and could not enrol at university as, with his passport confiscated, he could not show evidence of having indefinite leave to remain, meaning he would have to pay overseas student fees which he could not afford.

Appellants, like most lay people, do not possess the necessary skills to successfully navigate through this complex appeals system and structure their cases in the legal form that the AIT expects – it is thus in their best interests to secure legal representation (Clayton 2008; Wight 2004). Although many eventually represented themselves, it was rare not to have legal representation at some point during the appeal process. Securing representation was thus one of the first tasks of appellants, and one they would not have much time

to contemplate if the representative was to put together the notice of appeal.

Grounds for Appeal: Deportation and Article 8

Mostly, decisions to deport were challenged based on Article 8 of the European Convention on Human Rights (ECHR), regarding the right to respect for private and family life. When appropriate, the appeal could also include an asylum claim, citing Article 3 of the ECHR on the prohibition of torture. Article 8 of the ECHR provides that:

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

An appeal was thus a balancing act between the appellant's right to private and/or family life (point 1) and the government's interests in removing them (point 2). This means that in a deportation appeal based on Article 8, the AIT had to first establish if there was private and/or family life, and if removal would interfere with it. If that was the case, assuming interference was in accordance with the law, the AIT had to then determine whether that interference was proportionate or not to the state's legitimate desire for the prevention of disorder or crime.[6]

There was no detailed definition of what constituted private life in the ECHR or relevant case law. The concept was wide and specific to the circumstances at hand, ranging from the right to self-determination to the right to establish and develop relationships with others. Family life could be established through the existence of close family relations with a spouse through a marriage or civil partnership, and/or biological or adopted children (legitimacy bore no importance for Article 8 purposes). Wider family relations – like grandparents, grandchildren, aunts, uncles, nephews, nieces, adult siblings and adult children – also formed part of family life if the appellant's representative successfully proved there was a reasonable level of dependency and emotional connection. This was particularly important in cases involving young adults with no children of their own – like Tony – but it was not easily achieved.[7] Cohabitation was not a necessary element in establishing family life.

Proportionality had to be decided on a case-by-case basis, considering all the facts and circumstances of a particular case. There was some guidance to be found in ECHR case law regarding criteria to take into consideration when determining whether the deportation of a foreign-national offender was proportionate or not.[8] These include:

- the nature and seriousness of the offence;
- the length of the applicant's stay in the country from which they are to be expelled;
- the time elapsed since the offence was committed and the applicant's conduct during that period;
- the nationalities of the various people involved;
- the applicant's family situation, such as the length of the marriage and other factors expressing the effectiveness of a couple's family life;
- whether the spouse knew about the offence at the time they entered into a family relationship;
- whether there are children of the marriage, and if so, their age;
- the seriousness of the difficulties which the spouse is likely to encounter in the country to which the applicant is to be expelled;
- the best interests and well-being of the children, in particular the seriousness of the difficulties which any children of the applicant are likely to encounter in the country to which the applicant is to be expelled;
- the solidity of the social, cultural and family ties with the host country and with the country of destination.

What this translates into is that appellants had re-created their lives to make a good case, ensuring they scored well in all ten criteria. Further, they had to produce appropriate evidence to back up their claims, as the burden of proof lied with the appellant. The standard of proof in immigration cases was lower than in criminal cases, and amounted to the balance of probabilities, meaning that the AIT only had to be satisfied that a claim was more likely to be true than not.

The Making of a Case

When foreign nationals appealed against deportation, their circumstances became a 'case' – their lives were shaped to fit the parameters of good legal arguments. 'Facts about the circumstances of a particular family', Wight says, 'are not just there to be discovered. They must be created and translated in documents and "credible"

testimony' (Wight 2004: 21). This is done with the guidance of legal representatives, crucial insiders to the court system (Conley and O'Barr 1990; Wight 2004). But representatives alone were not enough to make a good case. Appealing at the AIT on Article 8 grounds demanded the involvement of the appellant's immediate family and other close relatives. Due to the nature of the balancing act described above, Article 8 deportation appeals focused much of their attention on the relationships, feelings, ambitions and regrets of the appellant and their family. It was thus a very emotional process, as Maria makes clear:

> it's not like I am here today gone tomorrow. It's an ongoing process and the whole family are taking a part in that. They are doing statements, they are going to court, they are the ones that [*cries*] … And what is really painful is when you expose your whole family, because you can't even go [to the AIT] on your own merit!

This section will centre on appellants' efforts and anxieties in making their case and producing related evidence for the hearing.

Securing Legal Representation

Legal representatives are crucial in translating the appellant's circumstances into a legal language that is accessible to the AIT. They actively build a case by searching for, selecting and framing their client's information according to the legal framework that allows them to act for their client (Conley and O'Barr 1990; Wight 2004). Legal representatives thus play a crucial role in how the experience of deportation is lived.

Securing good representation is not, however, a one-off effort – it was a constant concern for the research participants, many of whom went through two or three representatives until settling for one, as Samuel, David and George respectively explain:

> The first solicitor she wasn't no good, she didn't try to get me no bail and that, she didn't make no effort, she didn't really tell my mum what to bring in the first hearing … I like these ones now, they put a lot of effort into me.

> In my case the [sentencing] judge remarked that I shouldn't be deported, that is why the Home Office is not using the remarks, because if he said bad stuff about me they surely be using it. But my solicitor, it was his job to research and ask for that transcript and use it … So the solicitor had to do everything but he did nothing. Well, but thank god I have a good barrister, she is amazing. She is really cool. She really defends you, she puts her heart and soul into it. She fights for you.

> because what happened was that my solicitor was rubbish, was legal aid, now I know that the thing for free never never never *never* are gonna help you here! So I am paying, I do it for my family, for my children, because after what they been through I think that was some kind of relief, I got a good solicitor, I am paying my money so I know they are working for me.

Research participants were not seeking merely a qualified representative that could argue their case; they wished to have one that cared, that knew them and their case well, and that was unmistakably working in their best interests. Appellants also expected their representatives to inspire confidence and hope, even if that entailed different things for each person. Tania's partner and Naomi's son had the same legal representative, and yet the two women felt very differently about her. Naomi did not find it comforting when the legal representative said, 'if anything goes wrong with the case we just appeal it'. Naomi lacked confidence in the legal representative's work because she was already thinking about what to do if things went wrong. For Tania, the same statement was reassuring – she felt safe knowing there was a back-up plan, even if the prospect of another round of appeals was hardly encouraging. Maria, after consecutive rounds of appeals, was disappointed that her representative did not give her any hope:

> I walked away from there [a meeting with an immigration advisor] really kind of more worried because I thought he would say, 'Right, you might have two different things to look at', but he didn't, and I suppose it's right for him not to give me any hope, 'cause you know, it's probably right but … I kind of wanted a bit of hope. I need it.

For legal representatives this can be highly problematic as they have to carefully balance the merits of the case with their clients' expectations. Legal aid was available in deportation appeals subject to the appellant's financial situation and the merits of the case. Not all agree with George on the inferior quality of legal-aid representation. Many were in fact represented through legal-aid provisions, and both David's and Samuel's final representatives were legal-aid advisers. Whereas self-funded representation may give the appellant more confidence, it can also be a strain on the financial situation of the family.[9] Moreover, legal aid could allow for evidence that otherwise the appellant could not afford. As a senior immigration caseworker put it:

> When we had to appeal the first time around he paid for my work, for his partner had a high income and couldn't get legal funding, … so statements

> and all had little time to be done and we couldn't get a social worker. And then by the time the second appeal came out, her income had gone down, so he was eligible for legal aid, so we were able to afford to get a social worker and spend more time in the appeal.

Together, the appellant, family members and legal representatives will have to produce evidence in support of: the existence of family life; the disruption of family life by the appellant's deportation; and, the appellant's rehabilitation. This process is not necessarily devoid of conflict, frustration and negotiation in the relationship between the three parties involved.

Family Support

Evidence of family support may be provided in the form of witness statements. It is also very important that family members are physically present at the hearings, even if they are not going to be called to give evidence. Appellants are generally very aware of the importance of family support in the appeal, but quickly learn that this cannot be taken for granted. Naomi is a single mother of five, whose oldest son, Jerome, was appealing deportation. Her narrative shows both her embarrassment at not having a family that is there for her, as expected by the AIT, and the strategy she deployed to get around it:

> My partner [father to her youngest child], he came to court, and he tried to kind a say a few things on behalf of Jerome, but to be honest he does nothing for me or Jerome. Is just because I am on my own, I need to make it look like we got someone helping us, but he got his own life, he got his son, he comes and looks after his daughter here, but that is where it stops. No one gives Jerome anything, no one supports him in any way, so it's hard … My mum didn't want to come to court, my aunties didn't want to come to court, nobody wanted to get involved … So I had to beg him to come and go to court and say you give Jerome support. Most of what he was saying in court was just to help me, 'cause I got no one. And it's embarrassing when you got them saying, 'Look, you got no one to come to court'. And my mum lives in London and my auntie too. And all my family as soon as they hear 'court' and 'drugs' they don't want their name in it. And that's just it. They done me the letters but that was as far as it went, they wouldn't come to court, they wouldn't write statements, they will not stand and give evidence.

Tony believes his first hearing was jeopardised by the absence of his father, the one who could really show the AIT the depth of their relationship and the impact of his absence. Steve's hearing was very unfortunate in this regard as well. Divorced, but a father of three, Steve

had good grounds for his appeal. However, only one son was available at the time of the hearing to give evidence. The son arrived late, and the hearing was already in progress. Shy of entering the room he waited by the door. Inside, the Home Office Presenting Officer (HOPO) was arguing 'if family is so important for the appellant, why is there no one present today?' It was not until the end of the hearing that the son entered the room and by that time it was too late. Latrell's mother, an overstayer, feared the repercussions of showing herself in court. Dennis's wife was so overwhelmed by constant hearings and visits to lawyers that she felt the need to step back to keep her sanity, even if this meant jeopardising her husband's case. Tony's sister couldn't take any more days off work. There are many reasons why family members may not be present at or involved in the appeal. The tribunal's emphasis on the importance of family involvement, reasonable considering the grounds for appeal, is for some appellants a constant concern, as something as simple as having family members sitting in chairs at the back of the hearing can prove to be more challenging than expected.

Disruption to Family Life

The AIT makes a decision that goes beyond the removal of a person, and this is acknowledged. That is why hearings seek to ascertain the extent of disruption to family life and counterbalance this with concerns over public safety and crime prevention. The tribunal tends to presume that family life is disrupted if there are major impediments to the family relocating with the appellant. This assumption may, in practice, be flawed as not one of my research participants ever considered family relocation as an option.[10] This means that great effort is deployed in convincing the AIT that this is indeed not an option, and a big part of casework goes in to establishing exactly why the family cannot relocate. The spouse's professional obligations, language barriers for spouses and/or children, health needs that cannot be provided for in the country of origin, extended family present in the UK are but a few issues that may be in favour of the appellant.

Children from previous relationships, either of the appellant or the spouse, are a strong element in this regard: the AIT can hardly expect them to relocate with the appellant and be separated from their other parent. This, however, is a point that many appellants take issue with, as George, married to a British citizen and father of four children, remarks:

> In this country it is very unfair. I had this friend that I met in prison … He has a kid: the kid, she doesn't have a British passport, doesn't even live with him, he's not together with the mother right? … He was in for drugs, a dealer, he did two-and-a-half years. But he was okay, the judge said to him 'Okay, I won't break your family, I know you love your daughter, you can go now, give him back the indefinite [leave to remain]. And me, I got four children, British, from my wife, she is British as well, and we live together, a family … I got more positive and he was all negative. He is very happy now and I am still sad.

For George, and many others, it makes no sense that grounds of respect for family life should be stronger for those with 'broken' families as they believe that if you manage to build a successful 'traditional' family life you should be more entitled to have it respected than someone who has a 'broken' one. That the AIT is not there to reward one's successful family life but rather to assess eventual disruption is hard to accept and greatly affects appellants' perceptions of justice, as they feel punished for having 'proper' family units.

Rehabilitation

Finally, evidence of appellants' rehabilitation is important in establishing that they are no longer a danger to public security. The first proof of rehabilitation is accountability: it is crucial that the appellant recognises the crime, takes responsibility for it and shows regret. George, the only research participant claiming innocence for the crime that led to his deportation (possession of false documents with intent), jeopardised his case by constantly reaffirming he had been framed:

> in court, the immigration judge said to me, 'You still say you are innocent, you are still not admitting you did something wrong'. I said to the judge, 'I can't, sorry, even if you want to kick me from this country I say to you no, I did not commit any crime'. That was why they refused me, in the special remark he said 'he is not a trusted person'. Untrustworthy … Here I think they are punishing me even more because I pleaded not guilty.

I often observed in hearings unrepresented appellants stating they were innocent but had pleaded guilty on their criminal lawyer's promise of a lesser sentence. Many appellants believe this casts doubt over their, now alleged, criminality. Legal representatives on the other hand are well aware that the only message sent to the judges is that they are not taking responsibility for their actions and are thus not credible – that is, that they have learnt nothing from their time

in prison and are not rehabilitated. This is, in fact, a common point of contention between appellants and legal representatives, as explained here by a legal caseworker:

> The classic thing is that people often want to say, 'Oh well, I committed that offence, but I did it because … I hit that person on the street because they said …' that kind of thing. And you really have to tell, 'You been convicted of the criminal offence, you can't go back there again, it's too late'. In this one case, he sort of said, 'Well I was under pressure and it was a sort of stressful situation and you know', and I had to say to him, 'I really wouldn't say that if I was you … you don't want to be telling the judge that what you did was okay, because they are not going to accept that, just don't bother, stay away from that'. And that is quite typical … I mean you can, you are allowed to say these things in court but they won't do you favours. And that can be quite difficult.

The crime for which the appellant was convicted and the length of the sentence are but two criteria the AIT consider. If they are favourable, the appellant may cite the sentencing judge's remarks as evidence. For instance, the sentencing judge might have said that the appellant's behaviour leading to conviction was an unfortunate incident, uncharacteristic of an otherwise good record. On the other hand, if the sentencing judge recommended deportation, the respondent could use the remarks as evidence. A parole report might also be produced in support of the appellant if it attests to the unlikelihood of re-offending. The conduct of the appellant in prison and after their release is also of importance: rehabilitation in drug- or alcohol-abuse cases, seeking education both in prison and since release, giving support to the family, working or volunteering, involvement in local church or community groups – all attest to appellants' efforts to redeem their behaviour and contribute to society.

The Burden of Evidence

All the above-mentioned issues may be included in witness-statements,[11] the importance of which is clear to most appellants. David was going through his second round of appeals:

> The statement is just something you have to say, you have to say your reasons, put in your compassionate grounds … In the statement the only thing you want to mention is that you are sorry for what you have done in the past, but after that you just talk about everything that is good in you, your family, your feelings … because the Home Office only mentions the bad in you, it will never say, 'Oh, he's a good guy', he is going to mention the worst possible. So you have to contradict and put in that human feeling, that you were

> wrong, paid it and you are sorry and you want to move on with your life now. Because the way the Home Office see things is that you will never change, but the judges know the Home Office's intention. So you have to prepare the statement in your defence.

As mentioned above, witness statements are produced with the guidance of legal representatives who select from their client's account what is to be included and excluded and frame this newly assembled version of their lives in the legal and procedural conventions of the tribunal. Whereas David had experience of appeals over a long time, and hence shows a good understanding of what should go into a statement, more often than not this process is long and frustrating, and writing statements may involve some negotiation between appellants and legal representatives, as exemplified in the case of Tony:

> there were so many things I wanted to include in the statement and my solicitor didn't. What he was using was my private/family life, Article 8, and I'm a grown man, my dad don't need to depend on me and I don't need to depend on him, so he told not to include him, and also my stepmum and my sisters, because they had just dismissed a case like that before, so he just wanted to use me and my partner … So he said that my family was not really important, but I wanted to put in my father and sisters, I thought it would be stronger.

Witness statements are of course a form of evidence, reliant on the witness's credibility. But documentary evidence is considered more authoritative (Conley and O'Barr 1990; Scheffer 2005; Wight 2004). Thus, building a case involves gathering all sorts of documentation in support of an appellant's claims. The sentencing judge's remarks and parole reports have already been mentioned. Other relevant documentation may include letters from teachers of the appellant's children, health documentation, bank statements, slips from visits paid to the appellant while they were in prison and/or detention, phone records and so on.

The use of expert evidence at the AIT is common in asylum cases but less frequent in deportation appeals. Expert reports provide assessments on matters that are beyond the legal expertise of the tribunal but that are nonetheless of importance when deciding on an appeal (Thomas 2009). Social-worker reports are the most common expert evidence provided in deportation appeals. These reports examine the emotional ties and links of dependency among the appellant's closest family and attest to the disruption that the absence of the appellant may cause to the family.[12] However, getting appellants to agree to a social worker's report may test the legal representative's persuasive skills: for one thing they are costly, and for another, appellants

tend not to want a stranger prying into their domestic lives, while for many the term 'social worker' alone causes fear.

Strengthening the Case on a Daily Basis

In addition to writing witness statements for the appeal and producing important documentation, appellants also adopted or further developed forms of behaviour that were likely to strengthen their cases. Not being able to work or study, Tony opted to get involved with different community groups:

> It's been one year [and] two months since detention, I been doing volunteer work. Has he committed any crime? No, he hasn't. Just trying to keep my nose clean. 'Cause if I go to court, my solicitor can say, 'All right, you say he was criminal four or five years ago, but what has he done since he came out? He's doing this, he's doing that … He made a mistake when he was young'. I know that is what's going to happen, so I keep positive, doing what I'm doing.

Volunteering with different organisations, in particular if one is not allowed to work, shows commitment to the community and responsibility. In cases of addiction, unfailingly attending Alcoholics Anonymous or Narcotics Anonymous meetings and volunteering for drug and/or alcohol tests demonstrate a will to 'stay clean'. In the case of young adults, developing new friendships and avoiding 'hanging around with the gang' reveals a break from bad influences. Appellants may also become more engaged in their children's lives, picking them up from school and taking them to the park, helping with homework, getting to know their teachers and being more involved in school activities and so on.

Adopting or increasing such behaviour, however, should not be seen as a calculated manoeuvre intended to deceive the court. Whereas strengthening the case is certainly a good incentive to keep up with the 'good work', and this is definitely part of 'building the case', there are other reasons behind it. Volunteering keeps appellants busy and distracted, and helps to ground a sense of self-worth that is constantly being challenged by the state's intention to deport them. Being involved in school activities may serve the purpose of obtaining a written statement attesting to the appellant's commitment, but spending more time with their children also means making the most of the time the appellant and his family have for now in view of a future about which they were very much aware was uncertain.

This section has centred on the efforts and strategies that appellants, families and legal representatives deploy in the making of a case. It has focused on how preparing for an appeal hearing entails more than just gathering facts – it demands that appellants and their families present and adapt themselves and their circumstances as 'cases', a process that is not devoid of conflict and resistance. It is in this sense that cases are made, and not just prepared. The next section will examine the experience of appeal hearings.

Appeal Hearings at Taylor House

Taylor House is located in Islington, north London. As hearings are usually scheduled for 10 A.M. there is a small queue leading into the building early in the morning. Following a security check, people are instructed to take the lift to the second floor. The lift opens directly on to the reception and waiting area. On the wall, court listings inform parties which hearing room will hold their appeal and the panel that will hear it. Just before 10 A.M. the waiting lounge is full of the sound of different languages being whispered at the same time, children playing at the back, the sighs of long waits, foot and pen tapping due to people's nervousness and impatience. Legal representatives, suited up and pulling around trolley bags bursting with bundles, look for their clients. Some have found them and are going through details: 'Just tell the truth, okay? Don't exaggerate. You understand what I'm saying?' Court clerks run around making sure all the parties involved in their listings are present: appellants, witnesses, legal representatives and sureties. At 9.50 A.M. a clerk comes around, urging people to make their way to the court where their hearing is to be held, and the lounge empties.

Inside, the courtrooms are divided lengthwise by the tribunal's desk. The appellant and interpreter sit side by side at a desk facing the tribunal, with the legal representative to their left (if there is one present) and the HOPO to their right, each with their own desk. Each desk holds a jug of water with plastic cups neatly piled on the side, all carefully placed on a folded piece of A4 paper. The wall behind the panel bears the royal coat of arms, the wall to one side has windows leading either to the street or to the patio, and the wall to the other side contains the doors. At the back of the room a few chairs are laid out for witnesses and observers. All the courtrooms at Taylor House are similar, varying only in size with the exception of rooms 12 and 26, which have a third door connecting them to the security room

where appellants in detention are held prior to a hearing. This security door is an automatic 'lift-style' door, parting in the middle. A security guard escorts detained appellants into the room and sits behind them or by the exit door.

Although the AIT is intended to provide a less formal and more relaxed setting (Good 2004), there are several features that mean much of the hierarchy and formality of a courthouse are retained. The tribunal's desk is raised and can only be accessed through a separate door, used by the panel and the usher alone. This door stands next to the door used by all other parties. The panels' chairs are also clearly distinct: not only are they a different colour but they are also higher and more comfortable than the others. Neither members of the tribunal nor legal representatives wear robes or wigs, but are instead dressed in formal business attire. Those present in the room are asked to rise when the judges enter or leave, but they do not have to rise when addressing the tribunal.

Some representatives and judges believe that the setting is still too formal to be conducive to good problem-solving, and that immigration appeals would be less stressful to appellants and others involved (children in particular) if they were heard in a setting similar to those of social security appeals, where all parties and the tribunal sit around one table. For the research participants, however, who had been through criminal courts before, and were expecting a similar room, this setting is indeed less formal and less intimidating. I met Jamal just before the first appeal hearing of his son – a hearing at which the legal representative failed to show up, and Jamal had to 'take the lead'. Later he told me:

> It was very different from magistrates. It was a funny court. The way you were talking to the judge, the way of treatment, altogether, it's like an office, you were just in an office anywhere sharing information with each other and asking questions. And there is no hard language because they're judges. I know in the magistrates they can't talk, but that was not happening here.

Various people are present at a deportation appeal hearing. The panel of judges, who decide the appeal after considering both parties' evidence and submissions, is composed of one or two judges and a non-legal member. Non-legal members of the panel do not have legal qualifications but derive their expertise from experience and knowledge of the immigration services. Their role in the tribunal is contentious, and not all judges and solicitors appreciate their involvement.[13] Present too are the appellant and legal representative. Representatives may be legal caseworkers, solicitors or barristers. The Home Office

case is presented by Home Office Presenting Officers (HOPOs), who are civil servants, usually not legally qualified. Depending on the specifics of the case, interpreters, witnesses and sureties may also be present. Although I was usually the only one observing the hearings, other people may be sitting in court since more than one hearing is scheduled for the same court at the same hour, so parties to later hearings may be in the room waiting their turn.

Proceedings are adversarial as each party, or their representative, presents their case to the independent panel of judges. Parties may give evidence, call and examine witnesses and cross-examine the opposing party's witnesses. Yet the tribunal also has an inquisitorial role and may put questions to the witnesses to clarify inconsistencies or address relevant issues. Both parties are entitled to further examine the witnesses following the tribunal's questions. In general the tribunal asks its questions after the representative and the HOPO have presented their cases, but it may also pose questions during these presentations as issues arise (Macdonald and Toal 2008). These 'interruptions' however can increase witnesses' anxiety, who may feel that they are not answering 'correctly' or that their integrity is being questioned.

There are no transcripts of immigration hearings. Judges have to note down everything. This means that often those giving evidence are asked to slow down, yet speaking in dictation mode does not come easy, and many appellants and witnesses complained (to me) of the added stress this produces.

The hearings tend to proceed in an established order. The tribunal starts by addressing the appellant, stating why the hearing is taking place and who the parties present are, and how the hearing will proceed. It often also reasserts that the panel is independent and not aimed at punish the appellant. It will also make clear that a decision will not be made that day, but will be sent to the parties in writing about ten days later. This introduction to the hearing is very welcome to appellants and their families, who are thus guided through the hearing and can better understand what is happening.

The bundles of documentation submitted by each party to be relied on during the hearing are generally quite large.[14] Before hearing evidence, the tribunal makes sure everyone has all the necessary documentation and that all copies of the bundles are equally organised and numbered so that parties can refer to paragraphs and page numbers during examination and submission, so ensuring that all are literally on the same page. 'Bundle talk' can take anything between five minutes and an hour. When it takes a long time, this can

be distressing for appellants and their families, as it may be rather difficult to follow what is being discussed, and this prolongs their pre-examination anxiety. Once these matters are settled, the tribunal is ready to hear the evidence.

The hearing starts with the appellant's case, and the appellant is the first witness called to give evidence. If there are other witnesses, they are asked to leave the room until called to give evidence.[15] The legal representative will ask the appellant to state their name, date of birth and address. They are then asked if they wish to rely on their statement. The representative may pose further questions to emphasise or clarify certain issues in the statement, or to bring out recent issues that were not included in the statement. The HOPO then has a chance to cross-examine the witness. After that, the tribunal may ask further questions. The representative then has a chance to re-examine the witness to control possible 'damage' arising from cross-examination or the tribunal's questions. If there are more witnesses, these are called one at a time and examined in the same fashion. Giving evidence may take a few minutes or well over an hour. Witnesses tend to be the appellant's family members and/or close relatives. At times sureties or other character witnesses, such as a local minister or an employer, may be called to give evidence. The appellant's party is generally the only one who calls in witnesses. Once all witnesses are examined, the tribunal hears the HOPO's submission first and the appellants' afterwards. The tribunal will reserve its decision and finally pronounce that the hearing has come to an end.

The Build-up to the Hearing

Appealing deportation is a long process. At any given point there are short time limits to serve notices and to prepare and provide the parties with all the relevant documentation, making it a very stressful and time-pressured activity. Mostly, however, there are long periods of waiting between hearings, between notices and hearings, and between hearings, determinations and further appeals (Craig, Fletcher and Goodall 2008). These in-between periods more often than not last weeks or months, and are marked with extreme nervousness, anxiety, lack of sleep, irritation and lack of patience. For Naomi, whose nineteen-year-old son was appealing deportation, this period was particularly intense:

> I have headaches since the case. I haven't been to work last week and I haven't been to work Saturday and Sunday and I am not going to work tonight.

> Because I got these bad migraines and they get in the way. It's like I am I tired, am I ran down, am I exhausted? What's going on? It's just too much. I don't know how I am dealing with it to be honest … Sometimes I feel I am mentally breaking down. I just got to stay calm.

But as nerve-racking as it may be to contemplate the approaching hearing day, having the hearing postponed to a later date is an unwelcome and unforeseen anti-climax.[16] Appellants are seldom prepared for the possibility of an adjournment. Tomas's hearing was adjourned at the request of the HOPO who claimed the case was not on his list. Tomas became very distressed at the prospect of having to wait yet another three months. He paced up and down the corridor outside the hearing room, shaking his head and mumbling words neither his wife nor legal representative could understand. His representative urged him to be patient and reassured him they would use this time in their favour. Tomas is married and has three children. He also has a son from a previous relationship. His representative insisted that he keep close contact with this son, as that was the strongest element in his case's favour – the children from his current marriage and his wife can all be expected to move with him to Central Africa, but the son would not be expected to separate from his mother. The three months could also be used to gather more evidence that he has close contact with his ex-wife and takes part in decisions regarding their son. The representative warned Tomas that it was vital that the ex-wife made a statement in support of his appeal. For Tomas, however, who did not enjoy a smooth relationship with his ex-wife, this task, along with three more months of waiting, was daunting.

For Tania too, the adjournment of her partner's hearing was disheartening:

> The Home Office didn't produce what they call the bundles. They should have done it a few weeks or, you know, sometime beforehand and they just really left out to last-minute. So it is, in a way … the thing is it's just really prolonging a person suffering, that's how I feel. If it works in his favour then of course … but it's difficult. I was just a nervous wreck. I just thought, get on with it, just do it now, because just the whole build-up into the court case … I was sick, I couldn't eat, it was really very stressful. I'm calm now that I know … I'm calm to a degree but I'm not sleeping … It's hard, the whole waiting and not knowing, it's hard. It really is horrible.

Even if they can be used to their advantage, adjournments are always difficult for appellants and their families as they had expected some level of closure on the day of the hearing. Overall, the build-up to

the hearing is a particularly anxious time. In much the same way, the actual hearing is lived intensely and very emotionally.

Talk Yourself Free … or Not: On Being in Court

Experiences of appeal hearings differ from person to person not only according to their positionality (whether they are an appellant or a spouse for instance), but also from hearing to hearing. Many of the appellants who had been through successive rounds of appeals had very different experiences of each one. Hamid, for instance, had had two deportation appeal hearings. At the first, at which his appeal was denied, he believes the judges were not interested in ascertaining the truth; rather, they were looking for excuses to deport him:

> He wasn't looking for the truth, he wasn't looking for my story. He wasn't looking at my children, they wasn't looking at the story of my wife, he wasn't looking out at what happened to me. They was asking about what I did […] so when you blaming someone like this is 'cause I'm looking to destroy you, that's what I'm trying to do, if I blame you. So they was blaming me but they didn't ask me what I like to do, what I'm thinking to do, how I'm gonna be if they deport me, they didn't even ask me about it.

At the very last hearing, on the other hand, Hamid believes the judges were sincerely interested in finding the truth. At the time of the interview he had not yet received his determination, so he did not know whether the appeal would be allowed or dismissed, but to him, the questions the judges asked were clear, allowing him and his wife to provide good evidence. For him, 'it was very easy court that day […] it looked like the truth was around the room, around the people'.

Louise, the wife of an appellant, also found that the first and second hearings were very different experiences, even though both appeals were denied:

> Louise: The first one we went, it was just me and my husband, that was in 2006. And they didn't believe in anything he was saying. They said to me, 'If he has to be sent back, what would I do?' And I said I would go out there with him for like three weeks just try and sort it out, but then I would come back, but they twisted it to say that I would go live in Africa so there would be no need for him to stay out here, because I am happy to live out there, which is not what I said at all, but it was all written down, I couldn't change it. It wasn't nice. I could only answer yes or no answers, and could never explain myself to the judge, he would just stop me.
>
> I.H.: Were you not being represented?

> Louise: No, because we weren't told, because the solicitor that my husband got at the time was just rubbish and he didn't tell us anything, what to expect or come with us or anything. So it's only now that I got a new solicitor that I got to know a little bit more … The second time [in court] it was better. The new solicitor didn't go but he sent someone to go with us. […] It was better because we spoke and we drew up a thing before anyway [statement] so I had already talked to the solicitor and the other man went through it all with us so it was all clear in my head and I knew what to expect, and what to say. And it was me that all the questions were being fired at so I got to say what I wanted to say. And they did let me explain a few things so it was better. But I really did think they were going to say we won, but the Home Office man was terrible. He just said that he didn't see any problem that he was apart from us for three years. […] I thought the judge was on our side. He was really nice.

For Maria, on the other hand, appealing deportation at the tribunal was a dreadful experience:

> It was horrific […] When I was going to court for my crime I didn't get so disrespected, so humiliated, so belittled. I wasn't rubbished. In the immigration court I was ... well, a piece of shit would have been better. And I think that what undid me most was being called a liar and a deceiver. And I think that what infuriated me was the fact that my family were also liars, they were also deceivers and you know, the insinuation that I could never ever be trusted because I made a mistake in my life was very painful. […] When you go to the tribunal, they treat you like you are scum and they twist everything and what comes out is this vomit that is repugnant. And I know that I am not a bad person. But, that I am looked at as a monster and as an unwanted and as an undesirable. Like a leper, like when they used to walk around with bells on and it's inhuman and it's degrading and it's demoralising. It's heartbreaking. Sorry [*cries*]. The presumption that immigrants are liars is wrong. Is wrong and I don't understand how somebody isn't screaming out human rights.

What the above narratives illustrate are the factors that most often influence how people feel about the hearing: how prepared people felt for the hearing; whether or not they had a chance to voice their concerns; and how the panel of judges engaged with them. The outcome of the appeal is not the determining factor in how one feels about the hearing, even if reading the tribunal's findings can cause pain and frustration.

Feeling Prepared

As the case of Louise shows, having a legal representative present at the hearing is the crucial element in feeling prepared. I observed

six hearings where representatives simply did not show up, with no prior notice of their absence, forcing appellants and their families to either ask for an adjournment or nervously self-represent.

Whereas for both appellants and legal representatives preparation for court hearings is important, what 'preparation' actually entails differs. For representatives, preparing a client for court is mostly related to practical issues: how the hearing will proceed, how clients can get to the court and general guidance on how to answer questions – never guess, don't exaggerate, if you don't understand the question say so and so on. For appellants, being prepared entailed, first of all, knowing that their case was as strong as it possibly could be. Secondly, research participants felt it was important to know what would happen at the hearing, such as when a decision would be made and how the judges and opposing council would behave towards them. The most important dimension of being prepared for the hearing for appellants was to be given detailed guidance on the questions they would be likely be asked and the best ways to answer them – most feared answering the wrong way or misinterpreting the questions. This however, is very close to 'coaching' clients, a practice that legal representatives are not allowed to do.[17]

Feeling unprepared was also expressed in research participants' frequent remarks that the aggressiveness of the HOPO's examination or lines of reasoning came as a shocking surprise, as seen here in the words of Louise, whose husband was appealing deportation:

> the man from the Home Office said that Ellis [her son] is so young and three years isn't long, that it shouldn't matter that my husband is gone for three years! Well, it does not matter how old the children are, he's missed out so much now, and I had to do it all on my own. He [the HOPO] just seemed quite as if he didn't care, it was just like as if I was another number, I wasn't a situation with a family that had been broken with no proper explanation. He seemed like he just really wanted to win the case and not let him be here.

A similar sentiment was expressed by Trude with regards to her son-in-law's hearing:

> The Home Office bloke was awful […] He just ran rings around them [the appellant and his wife], and because I been sit listening to what was going on I could see what he was doing, but the judge wouldn't allow me to speak. So, it was ridiculous. And he does do things like that, he twists everything that is said, and he's quite a bully, when you get in court he is quite a bully. And of course, having us three who knew nothing about the legal system, and weren't even sure what was going on there, no solicitor, he just went all over us. And it was just a shame.

Naomi, meanwhile, was outraged that the HOPO assumed she was lying by saying that she did not know where her sister lived:

> He was being very funny about 'how could she not know where her sister is'. If he has a happy family and got his sisters and brothers around him, he's lucky, but me, I've been on my own since I was what, nineteen? Popping out children. So he can say whatever he wants to say.

For research participants, the ferociousness of the HOPOs' examination was an added distress that they felt might have been prevented if their representatives had warned them about it.

On Giving Evidence

As shown by Hamid's and Louise's narratives above, having a chance to voice one's concerns in a consistent manner is a vital factor in people's feelings towards the hearing. Yet giving evidence is not without emotional stress, anxiety and frustration.[18] As Naomi said:

> Giving evidence was very depressing because, you know what I don't like? I don't like having to go into my past. My past has a lot of pain and I don't like going into my past and explaining this and that. It really breaks me down. I got two dead fathers you understand? Having them dig up my past and ask me questions is hard. I don't like answering those things. And asking me about my son, it really broke me down, that is why I left the court and I didn't come back in. I just couldn't deal with it. I don't like answering questions like that.

Witnesses may be distressed not only about having to talk of intimate issues but also that their loved ones might see them cry, and more often than not witnesses do cry while being examined. They also fear that they might answer something the wrong way or they might forget to say something really important. For Louise (see above), writing a statement prior to the hearing took the edge out of being a witness as she felt safer having the statement to rely on. In fact, the fear of answering something the wrong way or misunderstanding a question is so prevalent that some appellants and family members, even though they spoke English fluently, felt safer using an interpreter: this way they were sure to understand the questions and answer without any of the ambiguity that might arise from using the wrong word.[19]

Anxieties apart, for most people, having a chance to speak was perceived as an important way to make the tribunal see how one has changed and is being truthful. Samuel had this to say:

> Yeah I like giving evidence, really, because if you don't speak they don't really know more about you and your plans, you know what I'm saying? So obviously the Home Office, they're going to try and paint me off as the baddest person even though you might have changed, you were young and that. I'm not really trying to make excuses but still they try to paint you as someone really bad so you have to really talk yourself free. So that's a good thing you know, to try to interact with the judges and that.

Being prevented from speaking can thus be problematic, as Andre made clear. He was upset that his representative did not allow him to speak to the judges:

> I wanted to speak to the judge so he could understand what it is like: how I've changed, so he can give me a chance to an honest life, you see? That is what I want. But my lawyer told me to shut up, but I would like the judge to hear me, so he know what is happening with me. If he hears you speak you show in your voice and manner that you are honest and he will feel it 'this guy is talking good, let's give him a chance'.

In fact, the importance of giving oral evidence was well engrained in research participants who often 'complained' about what others said during examination. Jamal for instance, was very unhappy with his son's performance at the hearing:

> And in the court, when it was finished, the judge talked to him [Jamal's son, the appellant] and said, 'The case is finished now, do you have any additional information or want to say something to the court?' And believe me all he said was, which is different from what I would have said, 'I got involved with this for the first time, and I'm very sorry, so I apologise'. That's all he said. It should have been different. Like telling them to give you another chance so that you don't end up in another country where there is danger to yourself, some explanation. I would have done that, but that was all he did.

Judging Judges

As we have seen in Hamid's narrative above, having a chance to speak is also related to how the panel is perceived to be listening. For Hamid the first panel was only interested in listening to things relating to his offence, and not about his family, his hopes and concerns. He was happy with the second hearing, however, because he felt the judges were interested in the truth.

Just prior to her husband's deportation hearing, Claire hoped that the judge would be English (not just British): she believed an English person would see things from her perspective, would understand how unreasonable it was to ask her, an English woman, to leave

her country of birth. The judge was English indeed, but her hopes were not met. As her legal representative was examining her, the judge kept interrupting with questions she didn't consider relevant at all: why her children were in prison, why her husband kept re-offending, and why she claimed that they could not maintain contact through modern technologies, such as e-mail and Skype, when she had already said they had a computer at home. The judge's questions left her feeling that he was interested only in establishing why her husband should be deported and not at all interested in hearing about the things that mattered to her: her twenty-five years of married life to the appellant, her dire situation of having two (adult) children imprisoned, the impossibility of her moving to North America and the conditions under which her husband would find himself if deported.

Jamal, on the other hand, even when the representative did not show up at his son's hearing, felt he was heard by the judges and had a fair hearing:

> I have no problem with the judge. There were two, a man and a woman. The two were listening, were very patient. I know their decision might be disappointing or maybe okay, I don't know about that, but the questions they were asking, I was very comfortable with it, and they were going in depth with everything. […] And he asked me many questions, like what do you think your son's life is going to be if we deport him? And they had questions for the other guy [the HOPO], but they didn't ask him too much, his answers were nothing, were not correct.

The way judges engage with appellants and other witnesses is also a determining factor in people's sense of fairness regarding the appeals system as a whole. Every time he was at the AIT, David encountered judges who listened to him and to his wife and asked about his children and their life in the UK. His last appeal was dismissed, but in his view not because the system is unfair but due to poor representation:

> As for the immigration court, it is more balanced than the criminal court. They hear your case and they also hear the Home Office part. What they have there is really an adjudicator, they are not on one side or the other. They are guided by your rights, by the law. […] So if you notice, my first time in this situation, the appeal was granted. Now, the second time there was aggravation because it's the second time I got arrested and go through this, but also I see that my solicitor did not defend me properly, and so that is why my case is dismissed. The judges really are impartial, it's just that my solicitor was no good.

Maria on the other hand believed her case was doomed to be dismissed over and over again because subsequent appeals take into account the first determination, whose judge she considered partial:

> I thought that it was going to be a fair chance, and I didn't and I hadn't. It's not a fair chance, it hasn't been and what I find really disturbing is that the initial judge that took my case, took it upon herself to make sure that it was hers. […] And I feel that I have been tricked and disadvantaged because every single appeal that I have done, all they do is re-read what she has written, so how is that a fair system? How is that an appeal? That is not an appeal! That's me saying 'have a read, what do you think?' […] I've had lots of kinds of hearings … I can't remember … about three times I went before the crown, the tribunal and then after that it's all just a paper exercise. But if it's just a paper, none of these other judges have met me, have heard me, have listened to my son, they haven't listened to what my nieces said, all they have done is re-read what the initial judge wrote, and that to me isn't a fair system. […] And I knew from the very first time I saw her [the judge] in court, and I told her, 'Just tell me what's going to happen because what I am getting from you is that I'm gonna get deported and you haven't even heard my case yet. The behaviour that you are showing me with the friendliness with the immigration Home Office is clear. Whereas with my solicitor it is a completely different thing'.

Maria's narrative also reveals how the behaviour of the judges is crucial to people's expectations of the outcome. Maria was sure her appeal would be denied because that was the message she took from the judge's behaviour. Samuel's narrative of three court hearings below is also illustrative of this:

> The judge, in the first hearing, she had her mind into somewhere else because she was trying to rush the proceedings because she had to go somewhere, so she wasn't really understanding. As soon as she walked in, you know sometimes you know, so she walked in and I saw the woman's face, the body language, and I knew it wasn't really my day. […] Then, when I went into Field House to see if I could get me another hearing, I walked in the court and the judge smile at me, I sat down and I knew it [i.e. that his appeal would be granted. It was]. After that, in this last hearing the woman, I thought she was firm, she seemed firm but I think she looks a bit fair, tough love kind of thing. […] I think she did understand what was at stake for me because I put it across to her that this was my last chance, I had everything to lose now, so if they do give me the next chance I'm not going to mess it up and I don't really get anyone to blame for. So I really think that she did get to see my point of view as well, she just has to balance it out.

In fact, appellants and family members read so much into judges' engagement with them that, if the judges are warm and nice, they tend to believe the appeal will be allowed, leaving them confused and betrayed when that does not happen, as Louise found out:

> I was confused … He [the judge] seemed so nice, he said he understood how hard this was for us, I really thought he was, you know, on our side … And

> then we get the letter saying we lost, it's hard. I don't understand, why was he nice if he knew he was going to decide against us?

The Aftermath of the Hearing

The end of the hearing does not mean closure. Appellants and their families have to wait for the determination. These are two weeks marked by disquiet, uncertainty and fear of what the future may hold, and constant anxiety over postal deliveries. I visited Naomi at home a few days after her teenage son's hearing:

> I have to wait a couple of weeks for the hearing to send me the reading. I don't even know what is going on. So I'm sitting down here, with my hands in my heart basically, what's gonna happen? Are they going to send him home or are they going to send someone around to pick him up or are they going to send me a letter saying that everything is okay? That is why I am going through my mail now, because I can't see a letter reaching and it's over two weeks now, right? So you are actually sitting down at home wondering, 'Okay, when is this letter going to be here?' I'm making him feel okay and safe, and then – *bang*! You get bad results and then his whole life falls apart.

Reading that the appeal has been successful can be very uplifting. Hamid called me when he heard his appeal was allowed. He was happy and relieved, and he believed the Home Office would not appeal the decision because the determination made it clear, in his reading of it, that they would not stand a chance. In fact, the Home Office did not appeal the decision. Jamal was not so lucky: his son's first appeal was allowed. He was happy and joyous when he heard the news, although he could not quite understand why his son was not immediately released from detention. A few days later, the Home Office contested the decision, taking it to another round of appeals that kept his son in uncertainty and detention for a further eighteen months. Samuel knew better than that, and was cautious about celebrating when his second appeal was allowed, waiting until the expiry of the period that the Home Office had to appeal:

> Because at the end of the day until they say 'you're free to go, your case is finished' you never know what's going to happen. Say if the Home Office appealed now to the higher court and a High Court allowed their appeal then you know there was no point on me really being happy until I got that closure. Now I got that closure.

In contrast, reading the determination of a dismissed appeal can be a painful experience, as George found out:

> They send you a paper in the shape of a dagger and reading it is being stabbed with it in your heart. The impact when you get a letter from court is great, because your mind goes blank, it's like they kill you. The worry kills you.

It is also an experience that forces appellants to rethink their options, as in Andre's case:

> When I got the letter I couldn't even read it right so I gave it to someone else to read it for me […] Oh my God! I was so stressed, I was thinking, what am I going to do? Run away? Disappear? Some friends were saying, 'Dude, we'll make you a new passport and you disappear'. But then it is like I am gonna lose my mother, lose my life. I can't live like that. […] Then I thought, I'll just go back to my country, I can still make a life from scratch, but it's hard.

For most, a dismissed appeal means another visit to their legal representative and, if there is agreement between them and the appellant, another round of notices and hearings. Appellants generally want to proceed with the case, and there are advantages to this, as illustrated in the statement below, but a decision can only be appealed on a point of law, and not all representatives are willing to take a case further if they see no merits in it. In their study of asylum appeals in Scotland, Craig, Fletcher and Goodall (2008) also found that representatives are divided as to when to take a case further: for some there is an ethical duty to only take further those cases that merit it and not to pressure the system with those who lack the legal grounds for further appeals. Other representatives feel it is their ethical duty to do as much as they can for their clients and explore all the possibilities. There are also funding considerations, as explained by a legal caseworker:

> I turn it away if it has no chance. There is privately funded work and there is legal aid. And in a legal-aid contract, you are obliged, if there is less than 50 per cent chance you can't take the case on, you won't get paid for it. You would have to turn the client around. In the privately funded, you will also not take the case if there is no merit, you'll say, 'I won't take your money for this', but some clients want to do it anyway. 'Cause there is always a chance, even if you got a low chance, you almost got to try, because if you don't try it reduces your opportunities for a later date. It's all down to funding really. […] If you argued your appeal and you lose but then later the law changes in your favour but you are still here [in the appeals system] then you can rely on arguments and points made previously so you should go and appeal if you can. But if you're given the opportunity to appeal and you don't, then you try again when the changes come and they will say, 'Well, you had the opportunity to present your facts'. So you should be trying every case, but it usually comes down to funding.

Recent legal-aid reform has limited and restricted funding in a way that has forced legal caseworkers to take on the role of judges (James and Killick 2010) or border officials (Fischer 2012) when deciding which cases to take on in the first place and which cases to pursue further, forcing them into 'a surveillance role, complementing or anticipating the judgements of the Home Office and its Border Agency' (James and Killick 2010: 13). Whether or not to take a case further is not a simple decision for representatives – appellants are not fully aware of these complexities and resent their representatives when they refuse a further appeal. When representatives will not take a case further under legal-aid provisions, appellants have to finance representation themselves (and find themselves another representative in the short period they have to appeal a decision), represent themselves or abandon the appeal altogether.

Looking at research participants and the cases that this research followed, two had their appeals allowed and two were deported. Three years later all the others continue to be in the appeals system, indicating the importance for appellants of remaining in the country. Even when legal aid was no longer available and their financial situation was dire, one way or another, money was secured for representation.

Learning the Right to Stay

In this chapter I have examined the deportation appeals process and how it is experienced and understood by appellants and their families. The appeals system is so complex that the longer appellants have been in it the more difficulty they face in understanding where their case stands. This confusion is not likely to be reversed even if, as the appeal proceeds through the system, appellants get to understand the issues at stake, the legal language and the procedures of the AIT. Tony, for instance, is so familiar with 'deportation' language that at times he sounds like a legal representative, yet he could not say where his case was when we met – it was somehow lost in a maze of notices and appeals. By the time I met him Tony was well versed in these issues:

> In January 2008 I had my flight removal, but me and a friend who is a caseworker we done our judicial review, we had no lawyer at that time so I done my own judicial review. And then the day I was supposed to go to the airport the judge cancelled my flight and then they brought me back. When I first got the letter from Home Office I was young and I was panicking. […] That place

> I was, there were no books, I could not learn about things, about how they can revoke your indefinite [leave to remain], how they can do this. I did not know nothing about it so I was panicking. […] Now I can stand in High Court and I'll defend myself. 'Cause I read so much in detention, I read so much books, I read about cases, and my friend is saying, 'You should come and be an immigration lawyer'. That is what you do. Because when they want to fuck you up you have to use your brain, you have to feel qualified.

Tony is not alone. David and many others use their time in detention to learn more about the law and their rights:

> I sort of know the law by now, because I was imprisoned, so I read a lot and I am familiarised with the law. I am the one who suggested to my solicitor that he put in a judicial review because they scheduled my deportation flight and I was in detention, And he said 'There is nothing we can do'. And I said 'What do you mean we can do nothing?' 'Well, your appeal is exhausted' and I said, 'No, it isn't, I still have many grounds, I have grounds for judicial review'. And he tells me 'So what are your grounds for judicial review?' 'Well, I have family, that is a ground' and he said, 'So give me some time, I'll look into it and I'll call you back'.

In fact, for both Tony and David, it was their knowledge of the use of judicial review that saved them from immediate deportation. Of interest here is Conley and O'Barr's (1994) study of how lay people conceptualise legal problems. The authors found that people conceptualise legal problems either in a rule-oriented approach (understanding what is at stake in court and framing their problems according to it, sticking to the facts for instance) or a relationship-oriented approach. The latter is the common approach among lay people, who tend to look at the moral and social issues. They frame their legal problems in court in terms of their relationships with the defendants and their past and present condition – they express their legal rights like one who is telling a story to a neighbour, looking to contextualise the facts in their personal worlds, which makes it harder for judges to understand their position, as they need to filter the facts from their stories. In fact, as already mentioned, one of the most important tasks of legal representatives is precisely to select from a relational narrative the facts and issues that can stand as evidence in court, and as I have shown, this process is not without conflicts over which elements of people's narratives should be translated into legal facts.[20] There is a divide between the manner in which my informants conceived their legal conflict with the Home Office, and this divide echoes the rules versus relationship approach of Conley and O'Barr.

Appellants like Tony and David, who have long been in the appeals system, have learned how to frame their stories in the required legal

fashion: they know what issues and facts are legally relevant to their cases and are well aware of what the tribunal is expecting from them and their families. Appellants' family members – spouses, in-laws, siblings and so forth – are in general not so familiar with the legal issues at stake as the appellants try to protect them as much as possible from the anxieties inherent in their cases. Parents of very young offenders, like Naomi, are the exception here, as they take ownership of their children's cases and become more learned in the immigration issues at stake. But understanding the legal matters at hand is not tantamount to taking a rule-oriented approach in Conley and O'Barr's sense. Appellants like Tony and David are very pragmatic when in court – they already know how best to answer questions and to stick to the facts that are important to the judges. In this sense, one may say they are taking a rule-oriented approach in court. During interviews with me, however, their narratives were not restricted to 'facts' and legal rights, but were again more relational: the emphasis was on what they felt was their entitlement to live in their country of choice with their family, on how fair or unfair they consider the law as it affected them and on how their particular case deserved a chance due to their personal circumstances, their ambitions, their past. Yet even their relational narrative is built within an 'entitlement' framework that seems to be related to their knowledge of the law. Peutz discusses how it was through imprisonment that her informants 'learned the law' and began considering themselves as 'rights-bearing subjects' (Peutz 2007: 184). The ability to perform a rule-oriented approach in court without discarding a relational orientation is testament to the appellants' learning of the law in the effort to increase their chances and by playing the game by its rules.[21]

Finding themselves in this ordeal, appellants soon learn the importance of 'learning the law', of understanding as much as possible what is going on in their cases and how to improve their chances. For many, the 'learning of the law' translates into 'speaking the law' – they have appropriated a rule-oriented narrative for their case, often sounding like legal caseworkers. They do so without discarding a relational orientation, but one that is structured nevertheless within a framework of rights and entitlements. This is particularly visible in the efforts appellants deployed in making their case and their own understandings and readings of procedures. Appellants may adopt a rule-oriented approach in court, but they still correlate a 'nice judge' with a favourable determination, and they still perceive as unreasonable the idea that 'broken' families have better chances than traditional family units.

Both appellants and their families emphasise getting legal representation from someone who cares for them and knows them well, much the same way that the importance of voicing regrets and concerns in court – and being heard – is seen as a vital element in their efforts to make the tribunal see that they are sincere and deserving of a second chance. That appellants feel a need to be seen as persons, and not merely appellants/criminals, by both their legal representatives and the tribunal, is testament to their relational orientation.

Furthermore, in adopting or furthering behaviour and activities that strengthen their case and in complying with their conditions of bail, appellants are also 'living the law' – they are living their lives in accordance with their cases, and are experiencing on a daily basis the anxiety, uncertainty and distress attached to their case and their desire to stay. However, the experience of appealing deportation cannot be looked at in isolation – it is part of a wider process that entails state surveillance and control, chronic uncertainty and limited scope for political action. These issues will be examined in the following chapters.

Notes

1. Available at: https: //www.gov.uk/government/collections/immigration-bill, accessed 21 May 2014.
2. For critical reviews of these reforms, see Clayton (2008), Macdonald and Toal (2008) and Thomas (2005).
3. If the decision to deport was taken on national security grounds, the appeal was heard at the Special Immigration Appeals Commission (SIAC).
4. In deportation cases under the Immigration Act 1971 this means that a deportation order cannot be signed while the appeal is pending. If the decision to deport was grounded under the provisions of automatic deportation, a deportation order may be signed at any stage but it will not cancel leave to remain while the appeal is pending. Under the Immigration Act 2014, however, deportation appeals are not necessarily any longer suspensive.
5. This is so if the appeal was heard by a panel of one or two legally qualified members. If the panel had three or more legally qualified members, either party can appeal directly to the Court of Appeal. I have never came across a panel with more than two legally qualified members in the hearings I observed.
6. For a detailed discussion of issues relating to jurisdiction and proportionality arising from Article 8 cases, see Clayton (2008: 122–35, 611–18).
7. For a discussion of such cases and difficulties arising in establishing family life with siblings and parents, see Peroni (2011).
8. These factors were outlined in *Boultif v. Switzerland* [2001] ECHR 497, and expanded in *Üner v. Netherlands* [2006] ECHR 873. See Clayton (2008) and Macdonald and Toal (2008).
9. George paid £600 for his second appeal. Some paid far more, spending up to £3,000 depending on the work needed.

10. In fact, for research participants, deportation meant family separation (or even termination), but never family relocation. See Chapter 4 for more on this issue.
11. A witness statement is a written record of the evidence, which that witness will give orally at the hearing. At times, witness statements may stand as evidence-in-chief.
12. Of course, the value of expert reports is subject to the credibility of the expert in question. The controversy surrounding the use of expert evidence at the AIT in asylum cases has not gone unnoticed by researchers (see e.g. Good 2004; Thomas 2009).
13. As revealed to me in informal conversations both with immigration judges and legal caseworkers.
14. The bundles include statements of evidence that can be called or just stand as evidence-in-chief; chronologies; skeleton arguments; lists of witnesses; and all other documentation that is to be relied on, such as expert reports, the criminal judge's sentencing remarks; parole reports; evidence of family visits to prison and detention.
15. Some judges also warn other people present in the court that if they choose to stay they may not leave the room until all the evidence has been heard.
16. At the hearing, when in court, representative or HOPO may ask for an adjournment of the hearing on different grounds. If the tribunal allows the adjournment, a new date for the hearing is agreed among parties.
17. These findings are not particular to deportation appellants, and echo the findings of a previous study on the onwards appeals and reconsiderations of asylum decisions in Scotland (Craig, Fletcher and Goodall 2008).
18. Albeit in a different context, Dembour and Haslam's (2004) analysis of being a victim-witness in a war-crime trial reveals how testifying is not necessarily part of a healing process; on the contrary, it can be a painful and frustrating experience.
19. In all instances the judge clarified that the use of interpreters could not be used as evidence by the panel to the detriment of the appellant. However, the judge hearing Andre's appeal warned him that the use of an interpreter would go against him, for it would reveal that he had yet not integrated into the community (if he could not speak the language). Andre's legal representative argued with the judge over the matter, evoking the procedural rules of the tribunal to establish that using an interpreter cannot jeopardise an appellant's case.
20. Conley and O'Barr (1994) used speech analysis. Although this study does not follow the same methodology, Conley and O'Barr's findings are mirrored to an extent.
21. See also White (2012) on immigration bail hearings in the UK, which documents similar issues.