

**The Independent Monitor for Entry Clearance Refusals without the Right
of Appeal**
**Report for decisions made between 1 January 2006 and 30 September
2006**
UKvisas' response to the Independent Monitor's recommendations

The Secretary of State for Foreign Affairs has published the fourteenth Report by the Independent Monitor for Entry Clearance Refusals without the Right of Appeal.

The Independent Monitor's main task is to make a twice-yearly review of between 3000 and 4000 randomly chosen entry clearance refusals with limited rights of appeal. The Monitor looks at the overall quality of refusal decisions, paying particular attention to fairness, consistency and the procedures used to reach those decisions.

This is the second report written by Mrs Linda Costelloe Baker and covers the period between 1 January 2006 and 30 September 2006. Her next report will be for September 2006 – March 2007, bringing the reporting period in line with the financial year.

For this report, the Independent Monitor reviewed a sample of 1,117 files and visited 8 overseas Visa Posts during the reporting period. Overview reports on her visits to Posts are published at www.ukvisas.gov.uk.

UKvisas welcomes the Independent Monitor's report, which focuses on decision quality, information for applicants, complaints and post-decision correspondence. The report makes both positive and negative comments on UKvisas performance.

Positive

- The Independent Monitor records a significant improvement in the quality of UKvisas' work;
- Refusal Notices are more consistent and less idiosyncratic;
- 90% of decisions are reasonable, a rise of 3.7% over the 2005 sample;
- Praise for the high quality of UKvisas' information leaflets;
- Only 4.2% applicants not notified of full appeal rights. This is down from 7.2% in 2005 sample. The Independent Monitor attributes this to UKvisas issuing firmer, more detailed and more helpful guidance on family visits;
- The Independent Monitor records greater pride in visa work and being an Entry Clearance Officer;
- Numerous examples of good ECO judgement, use of evidence and the Immigration Rules.

Negative:

- The Independent Monitor is disappointed that the redesign of central and local websites will not be completed until January 2008;

- UKvisas is still failing to provide consistent, accurate pre-application information to applicants;
- Examples of poor ECO judgement, use of evidence and the Rules;
- Poor complaints and post decision correspondence process;
- Inadequate attention paid to quality controls at time of issuing the Refusal Notice resulting in applicants not correctly being notified of their full right of appeal.

The report contains recommendations as to how UKvisas can continue to improve the quality of decision making, customer service and complaint handling. UKvisas welcomes these comments and is keen to use these recommendations to improve the overall quality of its service to customers.

Mrs Costelloe Baker commented that “As Independent Monitor I am pleased to record a significant improvement in the quality of UKvisas’ work as it began to focus more firmly on balance and customer service...[an experienced Entry Clearance Officer told me] “How many? How fast” started to be replaced by “How good?””. Mrs Costelloe Baker found that 90% of Refusal notices in her file sample were reasonable, a 3.7% increase over 2005.

UKVisas welcomes the Independent Monitor’s comments and is keen to respond to her recommendations to improve the overall quality of its service to customers.

The following table shows how UKvisas will respond to the specific recommendations.

Recommendation	Paragraph	UKvisas' comments
<p>[During the visits to Quito, Bogota and Kingston] I noted specific concerns about translator skills – for translator and Entry Clearance Office. Translating well in an interview context requires far more than proficiency in two languages. I recommended that UKvisas looks into the possibility of formal translator qualifications for Entry Clearance Assistants.</p>	26	<p>UKvisas agreed to consider the feasibility of qualifications for translators. To provide a standard central qualification would be difficult given the global spread of the operation, the number of different languages spoken and the varying availability of qualifications from region to region. With the number of interpreters involved it would also be potentially very costly. For these reasons UKvisas does not intend to pursue this further.</p>
<p>[Kingston visit report] I recommended that new Entry Clearance Officers should have an induction programme to introduce them to Jamaican life, including how savings accounts work and the many positives that exist.</p>	27	<p>Kingston agreed with this recommendation and now has an office manager who has responsibility for helping newcomers settle in. One of the Entry Clearance Officers has re-written the country notes, concentrating on information needed by Entry Clearance Officers.</p>
<p>[Dar es Salaam and Kampala visit report] I was struck by marked differences in the application experience....I could see no real reason for the difference in method and recommended that UKvisas explains how it decides which application method should apply at Post.</p>	32	<p>UKvisas' aims to provide a high level of service to all customers, using a high quality of decision-making in a cost effective operation. During 2007-08 the number of Visa Application Centres operated by commercial partner organisations worldwide will increase to cover 87% of visa demand following the signature of contracts with two service providers.</p> <p>Decisions as to which application methods will be used at particular Posts depend on a number of factors including:</p> <ul style="list-style-type: none"> - volumes of applications; - local internet accessibility ;

		<ul style="list-style-type: none">- the cost effectiveness, potential efficiency, and level of customer service that the various options would achieve.
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<p>[Entry Clearance Manager training course] I recommended that the first day should open with a strong presentation on the Prime Minister's Initiative, thus setting a framework for the course.</p>	<p>42</p>	<p>UKvisas agreed with this recommendation and a session has been introduced on the course. This will be further enhanced with additional material by the end of June.</p>
<p>[Entry Clearance Manager training course] I was told that there can be, for a variety of reason, reluctance to attend the Managers course and recommended that attendance should be mandatory before a posting.</p>	<p>44</p>	<p>Training is already mandatory for Entry Clearance Managers prior to a posting and the current guidance states that attendance on an Entry Clearance Manager training course is mandatory every 5 years. It was already proposed that this should be reduced to two. The main obstacle to a shorter time scale would be trainer resources and accommodation, given that the courses are already very heavily subscribed and the classrooms are in constant use. However, this is one of the areas that is currently under examination by an FCO Internal Audit of UKvisas Training. It is proposed that once the audit team's recommendations are received, the policy in this area will be clarified and a time scale of 2 months from publication of the final draft of the report will be imposed to implement the Auditor's recommendations.</p>
<p>In July 2006, I recommended that all standard visa information is provided centrally from UKvisas' website and that Posts have no more than one or two pages to provide local and factual information, such as how to apply, how long the processing time will be, and the most recent local refusal/issued rates. UKvisas agreed in principle that it should be the central point of reference but noted that there were technical and local issues to be resolved. It is disappointing to report that</p>	<p>47</p>	<p>Immediately following the July 2006 recommendation, website monitoring was devolved to the Director of Visa Service network. It was accepted that UKvisas did not have the resources centrally to control and monitor Posts' websites effectively. It was also recognised that the FCO Web Platform and the UKvisas website did not have the technical capabilities or resources to provide sufficient accessible or translated guidance. UKvisas identified that the proposed complete re-design of the</p>

<p>the complete redesign of all websites has a proposed launch date of January 2008, some 18 months after the problem was drawn to the UKvisas' attention.</p>		<p>UKvisas website would provide adequate content to replace that on Post websites. However as UKvisas is tied to the wider FCO Web Project this cannot be delivered until the new platform is in place in early 2008.</p> <p>It has since been agreed that the Commercial Partners will be responsible for translating content into the most widely spoken languages. UKvisas is working to ensure that effective processes are in place to manage web content on Post and Commercial Partners' websites.</p>
<p>There should be centrally sourced translations of the key leaflets into the main languages according to visa demand and lack of web access...In one of my recent visit reports, I recommended that the key leaflets should be translated into the most used languages.</p>	<p>49</p>	<p>In the past UKvisas has not had sufficient resources to provide translated versions of its information leaflets. Under the new Commercial Partners contracts, which came into effect in April 2007, the information leaflets will now be translated into the most widely spoken foreign languages. The translations will be available on the Commercial Partners' local websites. UKvisas will investigate with the Commercial Partners whether paper copies of the translated leaflets can be made available at Visa Application Centres. This investigation will be completed by July 2007.</p>
<p>The proposal [to stop producing information leaflets in their current form] was, I thought, internally focused and took no note of the needs of other organisations. I have, for example, recommended that the British Council is supplied with copies of the Student leaflet to hand enquirers.</p>	<p>50</p>	<p>The Independent Monitor was consulted on this option as part of a review of the dissemination of information to applicants. Her views were taken into consideration. Subsequently this proposal was dropped as research has shown the value of the leaflets. UKvisas will continue to investigate other ways of broadcasting its information to the public.</p>

<p>I recommended that UKvisas should research where potential applicants first try to obtain visa information and then provide information in an accessible, effective and cost effective format.</p>	<p>52</p>	<p>UKvisas agrees with this recommendation. In late 2006 UKvisas commissioned external research in key markets on how visitor and student categories obtain information. UKvisas also intends to carry out further customer surveys in 2007-08.</p>
<p>When assessing information needs, the information that is currently least helpful is on what documents are needed to support an application...UKvisas does need to provide consistent and specific information on document requirements and I recommend that it does.</p>	<p>53</p>	<p>UKvisas judges each application on its merits. Wide variations between the practice and custom in different countries, for example financial compliance evidence, precludes a unified list of documentary requirements. However, UKvisas agrees that information on documentary requirements should be more consistent. As a first step, the Points Based System to be introduced from 2008 for certain categories of visa applications will require the submission of specific documents.</p>
<p>Chisinau confirmed that they had sent their files, but they still haven't arrived. Visa application files contain sensitive personal data and I am extremely concerned that it appears that the diplomatic bag postal system has allowed significant numbers of files to go astray. I recommend that UKvisas investigates this as a matter of urgency.</p>	<p>62</p>	<p>An investigation has shown that due to human error in the internal postal system, four files were sent with other files to the AIT (Asylum & Immigration Tribunal). UKvisas is satisfied that there has been no compromise of sensitive personal data. The files did not leave the diplomatic courier system. Internal procedures have been put in place by UKvisas to prevent a similar incident from occurring in the future.</p>
<p>I recommend that UKvisas provides instructions on signing Refusal Notices and clarifies the circumstances when a signature or name is not appropriate.</p>	<p>73</p>	<p>Best Practice guidance will be issued within 3 months stating that Entry Clearance Officers must identify themselves on the refusal notice, unless the Entry Clearance Manager is satisfied that there is a risk to personal security. The important issue is that Post can identify the issuing Entry Clearance Officer. UKvisas</p>

		proposes that this will be a Post decision, and does not intend to maintain a central register.
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<p>I remain concerned that UKvisas tends to refer to these information failures as “applicants being denied the right of appeal”. No Entry Clearance Officer can deny an applicant the right of appeal because the right is enshrined in law. The failure is to provide correct information, and I recommend that UKvisas makes that clear.</p>	<p>76</p>	<p>UKvisas agrees with this recommendation and will remind Entry Clearance Officers by July 2007 that the correct phrase is “applicants are notified of a full/limited right of appeal”.</p>
<p>I recommend that as part of the promised redesign of the VAF, information that is genuinely needed should be captured on one form, and that Posts should not be able to add on extra requirements.</p>	<p>97</p>	<p>UKvisas agrees with this recommendation and is currently re-designing the visa application form to provide one section for generic information and separate sections for each category. The forms will include data that is currently on Posts’ own forms. The revised form is due for launch in October 2007.</p>
<p>There is no difference in appeal rights between business visitors and tourists but I recommend that UKvisas should remind Posts to classify visit visa applications carefully and accurately.</p>	<p>100</p>	<p>UKvisas agrees with this recommendation. Instructions will be issued to Posts by July 2007 to classify visitors more accurately.</p>
<p>The child welfare specific requirements of Rule 46A spell out the necessary measures clearly and helpfully and I recommend that they are used in detail for all child Refusal Notices.</p>	<p>102</p>	<p>UKvisas agrees with this recommendation. Entry Clearance Officers will be reminded by July 2007 of the requirement to include Rule 46A in the refusal notice for children.</p>
<p>AECIP 34/2005, which refers to visa applications that are granted by the Minister of State following representations by an MP, says that “On return to their country of origin, a visit visa applicant must go to the Post by a stipulated date and show the Entry Clearance Manager their passport”. On my visits, I noted that this mechanism was also being used for other types of applicant.....I recommended that</p>	<p>104</p>	<p>UKvisas agrees with this recommendation. A request to present the passport at the Visa Office was originally advised in cases where the Minister had made a representation, in order to obtain management information on compliance for these particular cases. UKvisas agrees that the guidance should be re-issued by July 2007, reminding Entry Clearance Officers of the limitations of use.</p>

<p>UKvisas should reconsider the guidance, noting that there are no power to enforce reporting back and failure to do so cannot be held against the applicant given the lack of powers.</p>		
<p>In July 2005 the provision for a single entry endorsement on a visit visa was introduced. UKvisas undertook to monitor use of that to ensure consistency....Having raised the problems and highlighted that the monitoring had been overlooked, I am concerned to note that when I asked again in early 2007, UKvisas replied that the monitoring had not been implemented and there had been no reported problems....I recommend that UKvisas should implement the monitoring without further delay.</p>	<p>107</p>	<p>UKvisas regularly re-issues the guidance to Entry Clearance Officers setting out the reasons for the issue of this type of visa. UKvisas originally intended to carry out temporary monitoring to ensure consistency. During internal staff re-organisation, the monitoring was overlooked. UKvisas does not intend to carry out any monitoring since there has continued to be no reported problems arising from this type of visa. UKvisas considers that the resource cost of carrying out monitoring would be disproportionate to any likely benefit.</p>
<p>I recommend that UKvisas confirms and amplifies Best Practice guidance (3.16.1) which says that Entry Clearance Managers should ensure that only documents that are specifically required are retained.</p>	<p>113</p>	<p>UKvisas agrees with this recommendation and will remind Entry Clearance Managers that Best Practice guidance states that Posts should have written authority from UKvisas if they deviate from the requirement to keep documents that are specifically required. This reminder will be issued within the next 3 months.</p>
<p>In March 2006, UKvisas began to keep a record of complaints handled by its headquarters. From then until September, I gather that it recorded 126 complaints. There is no record kept of the type of case these complaints relate to so I am unable to tell how many related to applications refused with limited rights of appeal. I am surprised that UKvisas does not record the source of the complaint, for example, the applicant,</p>	<p>149</p>	<p>UKvisas confirms that the register of complaints handled at UKvisas headquarters does contain information on the source of the complaint e.g. sponsor, MP or other interested party. It also includes information on the relevant Post, type of complaint, date received, deadline for reply, outcome and any follow-up action.</p>

<p>a sponsor, a representative, a MP or similar and I recommend that it should do that.</p>		
<p>I do note that in cases where there are full rights of appeal, the Refusal Notice includes the address of the Asylum and Immigration Tribunal and information on how to lodge an appeal. I recommend that applicants with limited rights of appeal should also be provided with the appropriate contact address and an explanation that an appeal should be in writing. It is up to the Tribunal to determine whether the appeal is on Race or Human Rights grounds.</p>	<p>154</p>	<ul style="list-style-type: none"> • UKvisas does not accept this recommendation. • Where a right of appeal may <u>only be brought on the grounds of Human Rights, Asylum or racial discrimination</u> the Notice Regulations provide that the Secretary of State need only notify the person in question of: <ul style="list-style-type: none"> • The reasons for the decision • The proposed country of removal • Reasons for rejecting any asylum claim <p>Where only limited rights apply, the Secretary of State does not have to notify the person of the means by which they may bring a right of appeal. In practice, for entry clearance decisions, we always give full reasons for the decision for all applicants whichever right of appeal the refusal attracts. We also make clear in cases where only limited rights apply that any appeal is limited to human rights and race relations issues.</p> • Where entry clearance is refused, it is UKvisas' view that human rights will only be an issue where the decision interferes with family life. Current case law supports this view. Where entry clearance is applied for with a qualifying family connection, full rights of appeal will normally apply. Indicating on a refusal notice where to appeal for an application that attracts only limited rights of appeal is likely to invite unmeritorious

		<p>appeals for human rights claims in non-family categories. It could also be argued that we are misleading potential appellants by giving details of how to appeal for a right which is only likely to be valid for a very small percentage of cases.</p> <ul style="list-style-type: none">• UKvisas and BIA consider that it is important that the notification of appeal rights is consistent wherever the immigration decision is made, whether in the United Kingdom, at ports or at overseas posts. Notification of decisions made in the UK which only attract limited appeal rights does not include details of how to appeal. This is similarly to avoid unmeritorious appeals. Where someone's fundamental rights are in question they are expected to raise the issues without being invited to do so.• It is reasonable to expect that an applicant would raise any concerns on the grounds of race relations or human rights issues, unprompted, with the refusing authority. Doing this means the Entry Clearance Officer will re-issue the refusal notice, which would generate the appeal application forms and start the 28 day time limit for the lodgement of an appeal.
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<p>I recommend that letters in cases with limited rights of appeal should not give the impression that there are no rights of appeal, and that they should include proper information on the available appeal rights and route.</p>	<p>157</p>	<p>UKvisas agrees with this recommendation and as stated in the response to paragraph 76 will issue guidance before July 2007 for Posts to ensure that any letters accompanying refusal notices mention "limited right of appeal". However see UKvisas' response for paragraph 154 for appeal rights and route.</p>
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