

Annex C

[Material for inclusion on FCONet and UKBA website]

UKBA's response to the report of the Independent Monitor (for Entry Clearance Refusals without the Right of Appeal) on decisions made between April and September 2008.

The Secretary of State for the Home Department has received the seventeenth Report by the Independent Monitor for Entry Clearance Refusals without the Right of Appeal (in practice with limited right of appeal on human rights or racial discrimination grounds).

The Independent Monitor makes a review of a randomly chosen sample of entry clearance refusals with limited rights of appeal. The Monitor looks at the overall quality of such refusal decisions, paying particular attention to fairness, consistency and the procedures used to reach those decisions.

This is the sixth and final report written by Mrs Linda Costelloe Baker and covers refusals during the period between April and September 2008. The next Report will form part of the September 2010 Report to be submitted by the UK Border Agency Chief Inspector.

For this report, the Independent Monitor reviewed a sample of 904 files and visited eight overseas Visa Posts (during the period October 2008 to March 2009). She examined a further 578 files during her visits to posts. Reports on her visits to Posts with UK Border Agency's responses to the recommendations made are published at <http://www.ukvisas.gov.uk/en/independentmonitor/imparliamentaryreports>.

Mrs Costelloe Baker notes that Visa Services Directorate recognises the need to "spend the next year concentrating on the basics...and paying attention to feedback." This will be UKBA's main focus for 2009/10. Mrs Costelloe Baker describes UK Border Agency as "...the most constructive organisation that I have ever worked alongside [with] enthusiastic, energetic staff whose commitment to doing a good job means that they have sought, welcomed and thrived on straight talking external scrutiny." She identifies areas in which further work is required including

- The accuracy of data capture
- The attention to evidence in the decision making process
- Promotion of consistency in the application of the new Immigration Rules relating to deception (paragraphs 3207 A and B)
- The appearance and quality of refusal notices
- Complaint and correspondence handling procedures
- Global implementation of IM recommendations
- The development of a constructive working relationship with the Chief Inspector of the UK Border Agency

UKBA accepts these comments and will take forward the work necessary to address improvements in these areas.

The following table shows how UKBA will respond to the specific recommendations in the Independent Monitor's report.

Paragraph	Recommendation	Response
132-133	<p>I noted lack of consistency in whether someone intending to undertake business related training in the UK was expected to apply as a Business Visitor or Student Visitor. 60% of Posts failed to amend the templated Immigration Rule 41 when the Student Visitor category was introduced in September 2007: the out of date version says that the applicant must not intend “<i>to study at a maintained school</i>”. Smarter Posts who made the change have generally realised that the correct version, “<i>does not intend to study</i>”, affects business visitors whose purpose is to attend a training course. If the course is provided by their employer who has business premises in the UK, that can be handled as a business visit. If the intention is to attend a separate training provider to study latest hairdressing techniques or security systems, or IT programmes, then that is a course of study and should be handled as Student Visitor. When Posts do that, they may refuse the application on the grounds that the training provider is not registered by the Department of Innovation Universities and Skills register.</p> <p>From correspondence on the files, business skills course providers are applying to be registered. I cannot, however, find any helpful advance information that the September 2007 Rule changes would affect such providers and many of their would be students will have wasted a visa application fee. There is inconsistency in the way these applications are handled and I recommend that UK Border Agency issues guidance.</p>	<p>Recommendation accepted.</p> <p>Paragraphs 46G (i) and (iii) of the Immigration Rules changed to address this.</p> <p>Entry Clearance Guidance has been updated accordingly so that it is clear in which circumstances a business visitor / student visitor visa is required. These changes can be viewed at http://www.ukvisas.gov.uk/en/ecg/visitandtransit/businessvisit or</p> <p>This guidance is in the public domain and may also be accessed by applicants.</p>
145	<p>I have been asked whether the fact that the applicant encloses a passport which shows a “refusal” stamp is enough to suggest ticking the “no” box was a genuine error; I have been asked for my view on whether an incorrect “no” should lead to a 10 year ban. My view is that my view is immaterial: it is the responsibility of the UK Border Agency to provide clear, unequivocal, accessible direction and guidance, and to have robust systems to ensure that laws and directions are followed consistently across all of its visa offices. I recommend that it now does that.</p>	<p>Recommendation accepted.</p> <p>We accept that there has been inconsistency in the way that the paragraph 320 (7A) and (7B) rules on deception have been applied. We will conduct a thematic review of this subject, analysing guidance, training and practical application of the Rules at post level and make recommendations for improvement on a global basis. The report will be produced by end July 2009.</p>
148	<p>My findings on evidence are an underestimate as it was not always possible to check the statements made in the Refusal Notice against the evidence provided by applicant because the supporting documents had been destroyed or returned to the</p>	<p>Recommendation accepted.</p> <p>UK Border Agency is currently reviewing its policy on document</p>

	<p>applicant. I recommend that the UK Border Agency reminds staff of the Operating Standards and Instructions requirement to retain <i>copies of all relevant supporting documents</i>.</p>	<p>retention - including Visa Application Forms and copies of supporting documents. The review takes into account the need to retain documents to facilitate audit and fraud investigations, as well as our Data Protection Act obligations to store data securely and for no longer than is necessary. UK Border Agency hopes to have the results of the review by the end of June 2009. Whatever the outcome of the review, full guidance will be issued to staff updating them on any policy changes. UK Border Agency will also remind staff of the Entry Clearance Toolkit requirement to retain copies of all relevant supporting documents.</p>
<p>192-194</p>	<p>I assessed in detail 10 Administrative Review cases from Canberra on my January visit to Jakarta and found an error rate of 20%. In the cases included in the Canberra sample, Reviews had been conducted thoroughly and accurately, perhaps helped by being able to see the original papers. I support Canberra's view that when receiving a Points Based application, it is vital to record all of the accompanying papers and whether they are copies or originals so that the Reviewer is able to see which were available to the Entry Clearance Officer. I also note that the practice of faxing file papers to another location means that Reviewer is unable to tell if the papers provided with the initial application were copies or originals.</p> <p>I thought that, even with just a few months' experience, there should be a workload and demand calculation so that resources can be allocated appropriately. The recent decision⁵ to remove from the Reviewer the responsibility to assess the whole case appears to have been made to reduce the time Administrative Review takes. It is hard to see how a Reviewer can "note and act on errors" other than those raised by the applicant if they do not look at the whole case, and doing that takes time that must be made available. In these control focused times it is extraordinary to limit the review on the basis that it takes too long to be thorough.</p> <p>The Administrative Review system cannot claim to be fair alternative to the right of appeal before an independent tribunal if there is lack of capacity to consider a case fully, lack of training in relevant detail, lack of will to courier original papers so that all the relevant documents can be read, a worrying level of errors and</p>	<p>Recommendation Accepted.</p> <p>UKBA will review of the Administrative Review process to be completed by end July 2009.. UKBA is aware of reports from Posts that faxing documents between Posts is cumbersome and time consuming. The review will also cover the allocation of resources and workload demands.</p> <p>The Administrative Review system is not intended to be an alternative to the right of appeal before an independent tribunal. The justification for removing the full right of appeal for PBS applications was due to the introduction of a new objective and transparent process. The purpose of Administrative Review is to ensure that no administrative errors have been made in the decision making process.</p> <p>The reviewing officer is not limited to reviewing only the area challenged by the applicant, and can note and act upon any other errors found in the rest of the decision.</p>

	<p>scope is curtailed. I recommend that UK Border Agency considers these points and confirms whether its business model is appropriate. It must work on instilling confidence that the Administrative Review process is truly independent of the decision maker, robust, thorough, fair and prompt.</p>	
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