

## The Independent Monitor for Entry Clearance

(Refusals without right of appeal)  
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### Report on my visit to Southern Africa : July 2006

In addition to preparing twice yearly Reports for the Secretary of State to present to Parliament, I shall also issue briefer Reports after each of my monitoring visits. This is my first Report and covers visits to Harare, Lilongwe and Pretoria. Harare is working in difficult circumstances, Lilongwe is a small Post in a country whose citizens have recently become visa nationals, and Pretoria is one of the busiest Posts that has not been visited by an Independent Monitor. I append the detailed Reports for each visit, but provide here an overview which focuses on common issues for UKvisas to address.

#### 1 Information for applicants

Information is important for all applicants, but especially so for those who do not have the right of appeal. Good pre-application information gives them the best possible chance of completing the application accurately and enclosing the relevant supporting documents. Sound competent local advice is not always available and without accessible, understandable, consistent and accurate information, applicants without the right of appeal are more likely to run into problems, and may need to pay a further fee to make a second application.

#### Websites

I am concerned at the poor quality and confusing nature of some of the information currently available.

- **Out of date** e.g. “93% of our applicants worldwide receive the visa that they have applied for”. This is wrong and appears to have remained unaltered for some years. It is also confusing when the reader goes to the next page and finds that “7 out of 8” applications are granted. Also “The Immigration Appellate Authority (IAA) handles the appeals process”. It has been replaced by the AIT.
- **Conflicting advice**, e.g. “What do I need to make my application? *one* recent, passport-sized colour photograph of yourself”. Another page on the same site says “PLEASE NOTE that when submitting your application, you MUST submit *Two* passport sized and current photographs of the applicant”.
- **Small discrepancies** such as entry clearance officer and Entry Clearance Officer appearing on the same page;
- **Confusing terminology** with references to Visa Officers making the decision. When an applicant gets a Refusal Notice from an Entry Clearance Officer s/he may wonder when a Visa Officer will make the final decision;
- **Incomplete information**, such as “You may be entitled to have your representative paid for by the Legal Services Commission’s Community Legal Service” and “If you or your sponsor feels that you have had poor advice from, or have been overcharged by, an immigration adviser in England or Wales contact The Office of the Immigration Services Commissioner”. In both cases, what about Scotland and Northern Ireland?



I understand that UKvisas' Communications Section conducts an annual review of the visa pages on Post websites in conjunction with the FCO E-media team. The review focuses on issues such as navigation and accuracy of content. Given the errors noted, some of which must have survived a number of annual reviews, I cannot be satisfied that these reviews are working effectively.

I am also concerned to learn that there are a number of restrictions which impose limits on what UKvisas can do with the visa pages on websites; apparently not all Posts will allow UKvisas to have the UKvisas logo on the homepage of Post websites. I am also concerned that a Commercial Partner has been allowed and perhaps encouraged to provide the visa information on their own linked website. Such proliferation makes consistency and updating even harder to secure, and the source of the advice is not always clear. The Immigration Rules and UKvisas' policies and practices apply throughout the world so applicants should be able to access advice direct from the UK Government's visa issuing organisation.

**I recommend** that all standard visa information is provided centrally from UKvisas' website and that Posts have no more than one or two pages which 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. Central control will allow greater consistency and more efficient updating.

### *UKvisas' reply :*

*We agree in principle that UKvisas' website should be the central point of reference for applicants in order to avoid duplication or out-of-date information. However, there are technical and local issues to be resolved and we are consulting with Posts on how best to take this forward.*

### **Leaflets**

I think that UKvisas' leaflets are very good, written in plain English and smartly presented. It was disappointing to see that in some locations they were not on open display. Whilst applicants can ask for a leaflet, it's not easy to know which ones you want if you cannot see what is available. I was told that if supplies were freely available they might be taken in bulk and sold. There are imaginative ways round this problem and in the short term I have recommended a notice board with each leaflet stapled to it plus an invitation to ask for the one that fits the circumstances. More permanently, **I recommend** that UKvisas commissions a Poster, perhaps in checkerboard style showing the covers of all of the leaflets with text on the lines of "Need a UK visa? Ask for a free copy of any of our leaflets". A Poster could be used more flexibly than a stack of leaflets and in a wider range of locations.

### *UKvisas' reply:*

*UKvisas is currently commissioning posters. It will include the IM's recommendation to advertise its range of leaflets available both on-line and in hard copies.*

### **How to lodge an application**

The former Independent Monitor, in her report for 2004, noted that the mandatory imposition of an additional charge when applicants are required to use a Commercial Partner may be unlawful. UKvisas has agreed with her recommendation that Commercial Partners' fees should be incorporated into the Visa fee. Its view, however, is that additional charges were not



unlawful as applicants can apply directly to the High Commission or Embassy. That view is not supported by the information provided to applicants;

- **Harare:** In Zimbabwe, “applications should be submitted in the first instance through our special operator FedEx”.
- **Lilongwe:** “The Visa Section of the High Commission is currently closed to the public for building works. Applications should therefore be submitted via DHL (the Commercial Partner)”.
- **Pretoria:** “All persons must now lodge their applications through DHL (the Commercial Partner). DHL will charge a fee of R195 (£14.40) for its visa application service”.

**I recommend** that action is taken immediately to ensure that applicants know they can deliver their application in person to the relevant visa office, or send them in the Post.

*UKvisa’s reply:*

*Applicants will as a general policy be directed towards the authorised commercial partner in the interests of efficiency. However, we agree Posts cannot refuse direct applications and will remind them of the position.*

## 2 File samples

At each Post I reviewed files where visas had been refused, including some cases where there is a right of appeal. In this Report I comment only on those within my remit: applications refused where there is no right of appeal, totalling 50. I do note that being able to review other types of application enabled me to see if those without right of appeal were being assessed in a different way, and I am satisfied that the quality of work was the same.

Whilst most decisions were fair and reasonable, I am astonished that an organisation that has been in its current format for 4 years, and existed by another name for years before that, has not achieved consistency in the style and structure of Refusal Notices. One of the key benchmarks for the consumer’s perception of service quality is consistency and reliability. From what I have seen already, an applicant refused without right of appeal who makes a further application, could end up with a second Refusal Notice bearing little resemblance to the first. Applicants who were friends could look at each other’s Refusal Notices and think that they came from different organisations.

A Refusal Notice should

- have a fixed structure and style - evidence, law, decision and supporting reasons
- include sufficient difference and detail to demonstrate that the applicant’s case has been considered on its own merits

**I recommend** that the structure should be as follows;

**Section 1. The evidence that the Entry Clearance Officer has taken into account.**

*For example -* In order to reach a decision I have taken into account your completed Application Form, your passport and the original documents that you provided



including 3 months' bank statements from your own account etc., noting the key documents that have been used as evidence in the decision..

**Section 2. The relevant Immigration Rules.** Applicants, and sometimes Entry Clearance Officers, are unfamiliar with the Rules and current Notices do not make it clear that an application is assessed against fixed Rules. A clear statement would solve both problems.

*For example* - You have applied to visit the UK for a two month holiday. I have therefore assessed your application against Section 41 of the Immigration Rules which say that I must be satisfied that a person seeking leave to enter the United Kingdom as a visitor:

- (i) is genuinely seeking entry as a visitor for a limited period as stated by him, not exceeding 6 months; and
- (ii) intends to leave the United Kingdom at the end of the period of the visit as stated by him; and
- (iii) does not intend to take employment in the United Kingdom; and
- (iv) does not intend to produce goods or provide services within the United Kingdom, including the selling of goods or services direct to members of the public; and
- (v) does not intend to study at a maintained school; and
- (vi) will maintain and accommodate himself and any dependants adequately out of resources available to him without recourse to public funds or taking employment; or will, with any dependants, be maintained and accommodated adequately by relatives or friends; and
- (vii) can meet the cost of the return or onward journey.; and
- (viii) is not a child under the age of 18.

**Section 3. The Entry Clearance Officer's decision,**

*For example* - I have decided that you should not be issued with a visa on this occasion because I am not satisfied, on the balance of probabilities, that you meet all of the requirements of Section 41 of the Immigration Rules.

**Section 4. The Entry Clearance Officer's reasons and supporting evidence.**

*For example* - Immigration Rule (vi) requires that you will maintain and accommodate yourself adequately on your proposed holiday out of resources available to you. I note that you are not employed and your bank account has a final balance of Y\$320 (£32) and does not show evidence of a regular source of income. I have seen no evidence to show that you would be able to maintain and accommodate yourself for a two month stay in the UK etc.

**I recommend** that UKvisas should require Entry Clearance Officers to follow a standard structure for Refusal Notices.

**UKvisas reply:**

***These recommendations are helpful and will in large part be incorporated into new 'decision quality' guidance and training material for Entry Clearance staff to issue by end October.***

**Quality of decisions and administrative review**



I disagreed with the Entry Clearance Officer's judgement in 8% of the cases I reviewed, taking a different view of the evidence on means. In a further 6% I found that the decision was not in accord with the Immigration Rules; 1 case had been closed without right of appeal having been wrongly classified, and 2 cases referred to an intention to return, rather than an intention to leave. In addition, I was concerned that a standard paragraph used in almost all cases in Harare could be construed as emphasising the likelihood of intending to return to Zimbabwe. I recommended that the visa team stopped using that paragraph forthwith.

I had concerns in two Posts about the thoroughness of the Entry Clearance Manager's review and also noted that it was not always being undertaken within 24 hours of the Entry Clearance Officer's decision.

### 3 Complaints

For applicants without the right of appeal, being able to make a complaint about inadequate service or an unreasonable decision is their only route of grievance. None of the Posts complied

fully with Best Practice 12.1 which says that "A notice must be displayed in public areas advising applicants to whom they should address their complaints. Where appropriate this should be translated into the local language. It may be helpful to provide a complaints box. This should be prominently displayed". None of the Posts had the complaints register required by Best Practice and **I recommend** that Posts are reminded of this requirement. Complaints provide a valuable source of feedback and a register, properly kept, allows analysis and overview. I also found that telephone complaints and enquires fielded by Entry Clearance Assistants or the Office Manager are not being captured so the consumer feedback is not being used to improve performance. Entry Clearance Managers generally commented that they had had little or no expert training in how to respond to a complaint. I provided a very brief good practice guide and intend to expand on that during my term of office.

#### *UKvisas' reply:*

*In response to the recommendations made by Fiona Lindsley in her 2004 Report (published July 2006), ECMs were reminded to ensure that a complaints procedure was in place in accordance with Best Practice. ECM's have been asked to confirm to UKvisas that they have implemented Ms Lindsley's recommendations.*

### 4 Access and sustainable development

I mention these briefly as they are not, strictly speaking within my remit. The UK has placed great emphasis on ensuring that people with disabilities can participate fully, such as providing step free access to services. There seems to be little focus on visa sections being good examples in this regard, yet accessibility will be a strong selling point for the genuine tourist or business visitor. As Scottish Legal Services Ombudsman, I had a policy on sustainable development not because I had to, but because I think it is an important issue where small efforts can add up to a big difference. UKvisas and visa sections worldwide could and should take a critical look at their use of resources and aim to lead.



## 5 Overview

These visits have showed what can be achieved by a full time Independent Monitor who is able to spend a quarter of the time at Posts. Whilst I have recorded my views in this and the Post specific Reports, I emphasise that visa teams and Commercial Partners have already implemented or are working on my recommendations so the impact has been immediate. I have been impressed by the open minded responsiveness shown in all three locations, and even more so by Entry Clearance Officers' thirst for good practice development and guidance. Entry Clearance Officers make important decisions under, in many places, great pressures of time and volume. The most competent that I saw were following best practice as currently taught by UKvisas but I found worrying variations in style, and especially in the ability to assess means.

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