

Report on my visit to Canberra: March 2009

BACKGROUND

- **Application processes:** Applicants in Australia complete an online Visa Application Form and attend a Visa Application Centre in a British Consulate to provide biometric data. They submit their application to the UK Border Agency office in Canberra, by mail or in person, paying a postage charge if they wish the decision and associated papers to be returned to them by mail. In mid February Canberra began to handle applications from New Zealand.
- **Demand:** From April 2007 to March 2008, Canberra received 31,778 UK applications a decrease of 43.8% compared with the previous year. From April 2008 to January 2009, there was a further decrease of 4%. Excluding children, whose applications cannot be counted separately, 6.2% of applications are recorded as being for non-family visits and 49.9% for Working Holiday Maker visas which, by the time of my visit, had been transferred into the Points Based System as Tier 5 Youth Mobility.
- **Refusal Rates:** The April 2007 to March 2008 overall refusal rate is recorded as 3%, rising to 6% so far this financial year. From December 2008 to February 2009 I found that the overall refusal rate for non-settlement applications was 11%.
- **Staffing:** There are 5 permanent Entry Clearance Officers, and one Entry Clearance Manager, though recruitment for a second is well underway. The team currently have a few weeks of temporary support from an Entry Clearance Manager from the Asia Pacific region and 3 Entry Clearance Officers. There is a complement of Entry Clearance Assistants.
- **Surplus and Deficit:** In 2006-07, the most recent figures available, the visa operation in Canberra recorded a surplus of £1,785,086.

The programme

I issued instructions for the file samples and registers I wished to assess. The High Commissioner hosted an enjoyable lunch where I met Australians who work in public service, and the Entry Clearance Manager arranged a working lunch with representatives from Australia and from visa services for New Zealand and Canada.

Information for applicants

From the file sample I found a significant number of applications had been refused, rightly, because the applicant had chosen the wrong visa category, or failed to provide specified documents. Responsibility can be divided: applicants are adults in an English speaking country and ought to read available guidance and UK Border Agency ought to provide accessible accurate information. In Australia I would divide that responsibility 50:50. I do not find that the UK Border Agency has done enough in response to the known problems. For example,

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local websites are only supposed to have details of the local application process but the “UK in Australia” website has far more, including typing errors which give a very poor impression. Faced with too much information, there is more chance that applicants will not bother to read it.

What potential applicants want to know is Do I Need a Visa? and a direct link to the home page of the UK Visa Services website would allow applicants to determine that question simply and quickly. Had that link been in place, applicants who have been refused Working Holiday Maker visas because they completed a Visit Visa Application form would not have wasted their money. **I recommend** (1) that the Australia website is amended to remove local interpretations and to provide key information through links to the UK based sites, either UK Border Agency or Visa Services.

UKBA Response

Accepted. UKBA acknowledge that the website had a number of faults. As discussed with the Independent Monitor during her visit, Post are conducting a root and branch review of the visa pages of the website, along with that of the spoke Post, Wellington¹. However, it should be noted that there is already a link to the Homepage of UK Visa Services website on the ‘ukinaustralia’ Visa Homepage. It is listed on the right hand side under useful links entitled 'Do you need a visa?' This will be given higher prominence on the revised website. The target date for implementation is the end of April 2009.

I note that a significant proportion of Points Based Applications have been refused because the applicant has not provided specified documents. **I recommend** (2) that the Application Forms are amended to include the word *Original* in the section on supporting documents and, if there is room, confirmation that internet printouts on their own are not acceptable.

UKBA Response

Accepted. The Points Based System application form (Visa Application Form 9) states very clearly - both in the body of the text of each section and in Annex A, that the documents provided must be originals. However, UKBA accept that not all the individual point scoring appendices state that the applicants must provide original documents and these will be amended accordingly.

Question Number 2 – How Do I Apply, is a matter for the specific post and Canberra’s website provided adequate information. As for When May I Apply? the Canberra website says that applications can only be accepted within 3 months of the intended travel date. There is no legal basis to support that policy and the only guidance I have found relates to visit visas, which can be forward dated by 3 months, and the on-line application form which says that a visa cannot be issued more than 3 months in advance of the proposed travel to the UK date. Forward dating is not the same as limiting when an application can be considered. **I recommend** (3) that this information is corrected.

UKBA Response

Accepted. The website information is incorrect and will be updated. It will state that where an applicant may not intend or be able to travel to the UK immediately following their application

¹ The Report of the Independent Monitor Visit to Wellington, March 2009

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the ECO has discretion to defer the 'effective' date for up to three months after entry clearance has been authorised.

I recommend also (4) that the UK Border Agency determines a formal consistent global policy on time limits for lodging an application and for forward dating a visa. I note that limits on the proposed travel date to the UK may adversely affect Tier 5 Youth Mobility applicants.

UKBA Response

Accepted. UKBA has commenced a review of this area, and is seeking clarification from Home Office Legal Advisers. Once there is definitive legal advice, UKBA shall review the staff guidance for post-dating entry clearances, and will ensure that this guidance is available to applicants and disseminated to all Entry Clearance staff and relevant Commercial Partner staff members.

The difficulties over straightforward accessible information for Points Based cases apply at all stages. If the application is refused the UK Border Agency website² says “See Annex C of the full policy guidance for more information”, but it’s very hard to find Annex C from that page and it would be simple to have a hyperlink. **I recommend** that (5) this omission is put right.

UKBA Response

Accepted. This will be resolved by the end of April.

Guidance for staff

I was concerned to see lengthy email chains between Canberra and Visa Services headquarters’ relating to policy and practice guidance. I commend Canberra for wanting to clarify how the Immigration Rules and organisational policy should be interpreted but the responses were often contradictory and the impression is of policy making on the hoof. I note that formal guidance on the Visa Services website has improved a great deal in recent months and to ensure global consistency, **I recommend** (6) that guidance that relates to other than a single and specific case should be approved more formally and added to the accessible written guidance. Working with the Canberra team gave me the opportunity to spell out three different stages:

- Step 1: law – this cannot be broken or amended;
- Step 2: formal guidance, normally accessible to the public and applicable to all cases;
- Step 3: the reasonable interpretation of guidance as it applies to a specific case.

Failing to understand and apply these key stages can lead to incorrect law becoming custom and practice, such as requiring a passport to have 6 month’s validity, a former “requirement” which UK Border Agency has already corrected.

UKBA Response

Accepted. The UKBA headquarters Entry Clearance Officer Support Team exists not only to advise Entry Clearance Officers on individual cases, but also to help them where they are for

² <http://www.ukba.homeoffice.gov.uk/workingintheuk/tier5/youthmobilityscheme/refusals/>

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whatever reason struggling to interpret the Rules/Guidance, or cannot find the guidance they need. This is not published guidance it is simply advice and clarification of existing guidance. Where a gap in guidance is identified, this is formally cleared with the UKBA policy lead before it is published in the online Entry Clearance Guidance. Staff are notified of key policy changes by global alerts which have a link to that online guidance.

Decision quality file sample

I reviewed 55 files where visas had been refused on randomly selected dates in January and February 2009, for applications with limited appeal rights in categories within my remit. Using my 5 point scale to assess whether the decision and Refusal Notice is lawful and reasonable, Canberra scored 87.3% in the Fair band (85% to 94%) and above the most recent global average of 84.8%. Data accuracy was good and it was easy to generate an accurate file sample.

All but two (96%) of the sample cases had been assessed against the correct Immigration **Rules**. In one case there was evidence of breaching the UK's Immigration Rules but the Refusal Notice failed to record a refusal under Rule 320 (7B). The second case raised what has been a contentious problem for the team, which has been given conflicting guidance. The applicant, using the on-line application form, had completed the form as a 2 year visit visa and had been refused on the grounds that she wished to work. I noted, however, that she stated that the purpose of her visit was as a Working Holiday Maker. The fee for both types of application is the same. Given the clearly stated purpose, I thought the application should have been handled as a Working Holiday Maker and when it was re-considered, the visa was issued. In contrast, I was content that similar applications where the intended purpose was "work and travel" should be considered, and refused, under the visit visa Rules.

9% of Refusal Notices contained statements that were material to the decision and not in accord with the **evidence**: this is a better performance than I have seen on some recent visits. There were no cases of wholly unreasonable **judgement**.

Two visit visa applications had incorrect **information** on appeal rights and I reminded Entry Clearance Officers that for all of the visit visa categories, there are full appeal rights if the person will see a qualifying family member. I repeat my concern that Posts such as Canberra are hampered by handling on-line applications because the on-line form does not include many of the useful additions now included in the paper forms. I also note that there is an unfair global inconsistency because a proportion of applicants are required to provide different, and more detailed, information, depending on whether they use the on-line or paper form.

Two cases were adversely affected by **maladministration** because correspondence had not been linked to the application. In a Points Based System Tier 1 case, I recommended that the fees for further applications (principal and dependents) be refunded, along with an apology because the initial applications should have been successful.

Before reaching a combined score, I assessed visit visa applications, of all types, separately from Tier 1 and Tier 5 of the Points Based system finding that the highest error rate was with visit visas which scored 73%, in the Poor band. Tier 5 Youth Mobility, had no errors at all but it is worrying that so many young Australians are wasting the visa application fee because they do not realise that they have to provide supporting evidence, or that it has to be original bank statements rather than downloaded from the internet.

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Turning to my 5 pointers to assess the **quality** of the Refusal Notices, Canberra's were excellent and I recommended only the most minor rewording with regard to the list of evidence taken into account – "and that you have not provided any documents".

Administrative Review

In the sample cases I noted that 36% of the Tier 1 applications and 23% of the Tier 5 applications had applied for Review and that in half, the applicant provided documents that were missing first time round.

Of the 46 Administrative Reviews completed to date, the Entry Clearance Officer's decision was overturned in 20% and the Reviewer corrected the reason for refusal in a further 4%. This is a high rate of error for fact based cases. I note with concern that in addition to Canberra not determining the original application with the UK Border Agency's time targets, 74% of the Administrative Reviews took longer than the 28 days allowed.

I assessed a number of 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, I found that 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 a Reviewer in another location means that Reviewer is unable to tell if the papers provided with the initial application were copies or originals.

Correspondence and complaints

Canberra knew that there problems with correspondence and was about to change the administrative arrangements. 20% of the sample cases, included correspondence, far higher than the 4.7% global average. A third of the letters/emails were complaints about delay but I also found applications that had been refused improperly because correspondence had not been linked. More than half of the letters and emails had had no response, including some that were service complaints which had not been recorded on the complaints register. I recommended that in 3 cases there should be a response and in one, that there should be a fresh response, following UK Border Agency's practice guidelines, to a complaint about conduct and discrimination.

As a simple process path, I suggested that Canberra bore the 4 A's in mind:

- Attach correspondence to the specific case;
- Assess the content and then direct and respond accordingly (assistant, officer or manager);
- All papers on one case in one place;
- Analyse complaint patterns and use the feedback to improve.

OVERVIEW

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I thought Canberra was Fair for information provision generally, decision quality was Fair but complaint handling and recording was Poor. My overall assessment is that performance in Canberra is **Fair**.

Canberra has a backlog of applications and is taking far longer to reach a decision than the official 5 to 15 day target. It was, however, hard to establish the real turnaround time from the applicant's perspective as there were gaps before an application was recorded on the IT system and gaps between the decision date and the Refusal Notice being posted out. In addition to the constant pressure of baskets full of pending files, Canberra staff have to manage complaints about the delays. I note that temporary staff have been provided and there are newly trained staff now in post: removing the backlog has to be the team's priority so that they have room to breathe and implement the quality changes that are necessary.

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