



REPORT BY THE INDEPENDENT MONITOR  
(Immigration and Asylum Act 1999)

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JUNE 2004



## **REPORT OF THE INDEPENDENT MONITOR 2003**

### **(Immigration and Asylum Act 1999)**

#### **Introduction**

1. I was appointed the Independent Monitor on 1<sup>st</sup> December 2003. My appointment is for two years and will expire in November 2005. During the period of my appointment I will write three reports. This is the first of these reports and relates to refusals made in the calendar year 2002. This report ought to have been submitted to Parliament in November 2003 but has been delayed due to the length of time taken by my recruitment. It was agreed it would be submitted to Parliament by the end of May 2004. I will submit two further reports after this one: one in November 2004 relating to refusals made in the year 2003 and one in November 2005 relating to refusals made in the year 2004. I am the third of holder of this post. The first was Dame Elizabeth Anson who submitted seven reports to parliament between 1993 and 2000, the second was Rabinder Singh QC who submitted reports in 2001 and 2002. I was appointed to the post following an open recruitment process.
  
2. My appointment was made by the Secretary of State for Foreign and Commonwealth Affairs under section 23 of the Immigration and Asylum Act 1999 ("the 1999 Act") as amended by paragraph 27 of schedule 7 of the Nationality, Immigration & Asylum Act 2002 ("the 2002 Act") which reads as follows:
  - “(1) The Secretary of State must appoint a person to monitor, in such a manner as the Secretary of State may determine, refusals of entry clearance in cases where there is, as a result of section 90 or 91 of the Nationality, Immigration & Asylum Act 2002, no right of appeal.
  
  - (2) But the Secretary of State may not appoint a member of his staff.
  
  - (3) The monitor must make an annual report on the discharge of his functions to the Secretary of State.

(4) The Secretary of State must lay a copy of any report made to him under subsection (3) before each House of Parliament.“

3. I can confirm that I am not a member of staff of the Secretary of State as required by s.23 (2) of the 1999 Act. I am currently employed as a solicitor by Hackney Community Law Centre. To ensure my independence and neutrality I have agreed not act on behalf of applicants in immigration cases whilst I hold this appointment.
4. The type of refusals that I am appointed to monitor are those which have no right of appeal in accordance with sections 90 and 91 of the 2002 Act, as follows:

“90 Non-family visitor

- (1) A person who applies for entry clearance for the purpose of entering the United Kingdom as a visitor may appeal under section 82(1) against refusal of entry clearance only if the application was made for the purpose of visiting a member of the applicant’s family.
- (2) In subsection (1) the reference to a member of the applicant’s family shall be construed in accordance with regulations.
- (3) Regulations under subsection (2) may, in particular, make provision wholly or partly by reference to the duration of two individuals residence together.
- (4) Subsection (1) does not prevent the bringing of an appeal on either or both of the grounds referred to in section 84(1)(b) and (c).

91 Student

- (1) A person may not appeal under section 82(1) against refusal of entry clearance if he seeks it –
  - (a) in order to follow a course of study for which he has been accepted and which will not last more than six months,

(b) in order to study but without having been accepted for a course,

or

(c) as the dependent of a person seeking entry clearance for a purpose described in paragraph (a) or (b).

(2) Subsection (1) does not prevent the bringing of an appeal on either or both of the grounds referred to in section 84(1)(b) and (c)."

5. Since 2 October 2000 'family visitors' have had the right of appeal, removed in 1993, restored. Further since 15<sup>th</sup> May 2002 family visitors have not had to pay a fee for such an appeal. Family visitors are currently defined by the Immigration Appeals (Family Visitor) Regulations 2003 as follows:

"2. (1) For the purposes of section 90(1) of the Nationality, Immigration and Asylum Act 2002, a "member of the applicant's family" is any of the following persons-

- (a) the applicant's spouse, father, mother, son, daughter, grandfather, grandmother, grandson, granddaughter, brother, sister, uncle, aunt, nephew, niece or first cousin;
- (b) the father, mother, brother or sister of the applicant's spouse;
- (c) the spouse of the applicant's son or daughter;
- (d) the applicant's stepfather, stepmother, stepson, stepdaughter, stepbrother or stepsister; or
- (e) a person with whom the applicant has lived as a member of an unmarried couple for at least two of the three years before the day on which his application for entry clearance was made.

2. (2) In these Regulations, "first cousin" means, in relation to a person, the son or daughter of his uncle or aunt."

6. I monitor predominantly the files of those wishing to visit the UK for the purposes of visiting friends and more distant family members, tourism, business, for conferences, for medical treatment, to transit to another country, and to study on short courses – mostly English as a foreign language. These visitors and students lost their rights of appeals when the Asylum and Immigration Appeals Act 1993 (“1993 Act”) came into force on the basis that these type of matters did not ‘justify the full panoply of judicial consideration and publicly funded representation’<sup>1</sup> It was considered too expensive to give a right of appeal, and in addition such appeals were causing delays to more important cases dealing with issues of settlement. The family visit appeal was reinstated because of disquiet, particularly in the Asian and black communities, that family members were being refused visit visas and there was no appropriate remedy to address the refusals.<sup>2</sup>
7. My remit is to monitor and report. I cannot take up individual cases or make binding decisions but I can make recommendations. I have not been approached by any individuals about their refused applications. I do not find this surprising as it is clear that this group of applicants have very little connection with the UK. I am contracted to work for 40 days to produce my report. This time is broken down into 30 days reviewing the random sample of files (for this report 1080), consulting with interested individuals and groups (primarily UKvisas – the joint Home Office/ Foreign Office Directorate responsible for the entry clearance system, Members of Parliament, immigration law practitioners, the Immigration Advisory Service, Citizens Advice and the British Council) and writing the report. In addition 10 days are spent on familiarisation trips to Entry Clearance Issuing Posts abroad (for this report visits were made to Dusseldorf, Nairobi & Harare). 40 days is a short period to produce such a report and there are issues that I have not been able to research or develop as much as I would have liked within the time constraints, even though I was given funding for an extra three days due to a larger than expected number of files. It will be for Ministers to consider whether it would be worthwhile spending more funds for a more detailed exploration of the issues, and to consider the limitations of the exercise in relation to the review of the sample of files set out below. Like my predecessors I have found it relevant to go beyond the strict confines of my statutory remit, particularly in relation to issues that have arisen from my familiarisation visits to overseas Posts. I believe that all issues covered in my report do ultimately have consequences for those applicants whom I monitor.

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<sup>1</sup> Mr Kenneth Clarke, Home Secretary, 2<sup>nd</sup> Reading debate on 1993 Act, 2.11.1992

<sup>2</sup> “Family Visitor appeals: an evaluation of the decision to appeal and disparities in success rates by appeal type” by Verity Gelsthorpe, Daniel Howard, Robert Thomas & Heaven Crawley, Home Office Online Report 26/03 p. 15

8. I set out a summary of my recommendations in Annex D of this report. I hope that my recommendations will be of use to UKvisas, and of interest to Ministers, Members of Parliament and lawyers in the field. I make two key sets of recommendations. Firstly that UKvisas clarify the parameters of appeal rights in student and visit cases as I believe that in excess of 10,000 applicants per annum are being wrongly denied the right of appeal. Secondly that there be a review of substantive decision making, particularly with reference to refusals which focus on a lack of intention to leave the UK or breach of conditions: I believe these refusals do not relate sufficiently closely to the requirements of the Immigration Rules. UKvisas has welcomed many of my recommendations.

### **Overview of the Entry Clearance System**

9. The Foreign and Commonwealth Office states that its objective in relation to the entry clearance system is as follows: "To regulate entry to and settlement in the United Kingdom effectively in the interests of sustainable growth and social inclusion". This is a shared objective with the Home Office, which is responsible for setting immigration policy.
10. There is no doubt that the visa system is going through a period of radical change. A system which 25 years ago operated to issue relatively few visas for settlement given after long personal interviews with no issues of security has transformed into an operation which issues hundreds of thousands of visas, mainly for short term purposes, using more and more computer based technology and in circumstances of heightened concern for the safety of staff and applicants due to terrorist threats and an on-going battle against fraud. It is a system dealing not only with intrinsic stresses, but also with demands from Government to exclude access to the UK by potential asylum seekers and to facilitate its managed migration policy to bring workers to the UK to deal with labour shortages in some areas. It is also a system that Government has deemed must finance itself in the context of costly technological innovations, which may be deemed necessary to combat fraud and abuse, or which may enhance the service in terms of speed and accessibility.
11. Of particular relevance to this report is the role of the visa system in relation to foreign students. In her July 2000 report Dame Elizabeth Anson drew attention to the Prime Minister's Initiative (PMI), launched in June 1999 with a five million pound marketing campaign, to bring greater numbers of foreign students to the UK. The British Council report that there were some 750,000 foreign students in the UK in the year 2003, and that they generated income of £3 billion for our country. They predict that the number of foreign students will be more than a million by 2025, and

also that by 2020 the income generated will be £13 billion. The majority of foreign students currently require visas in order to study in the UK and this will continue to be the case. The British Council has invested a great deal of resources in the production of publications to assist foreign students, educational institutions and posts in the processing of their visa applications. In the context of the thousands of new visa applications posts will be handling this is entirely appropriate. I commend this work and recommend its use.

12. The visa system is going through a period of rapid expansion. In 2003 there were 166 entry clearance posts dealing with visa applications, and 2102 members of staff working on the process of issuing visas. In 2002 1.94 million visas were processed, a 9% increase on 2001. It is predicted that the number of visas applied for will double in the next ten years. The increase in the number of visa applicants has come about in part due to increased visa requirements imposed by the UK and in part due to increased international travel.
13. In October 2002 citizens of Zimbabwe became visa nationals, and in January 2003 Jamaican nationals followed. These changes came about as a result of high numbers of visitors from these countries being refused leave to enter. The Maldives, Mauritius, Papua New Guinea and the Slovak Republic ceased to be visa national countries in 2002 and 2003 but nationals of these countries were issued very few visas in any case. 25 new transit visa requirements have been introduced since the last Monitor's report in November 2002. Transit visas were introduced for nationals of Angola, Albania, Algeria, Bangladesh, Belarus, Burma/ Myanmar, Burundi, Cameroon, China, Colombia, Gambia, Ivory Coast, Lebanon, Liberia, Macedonia, Moldova, Nepal, India, Pakistan, Palestinian Authority, Rwanda, Senegal, Serbia & Montenegro, Sierra Leone & Vietnam, whilst only three countries were taken off this list – namely Libya, Croatia and Slovakia. It is likely that there will be further additions to both the visa national list, and to the list of those requiring direct airside transit visas.
14. In November 2003 the staged introduction of the UK Residence Permit was commenced, requiring entry clearance for citizens of 10 countries (Australia, Japan, USA, Canada, Singapore, Malaysia, Hong Kong, New Zealand, South Africa, South Korea) who are not visa nationals if they are entering for a period of longer than six months. Entry clearance is now a requirement for all work-permit holders staying for more than six months. This measure is aimed at preventing visa fraud across the European Union and will apply to all nationalities by the end of 2004.

15. The rate of visa refusal rose to 13% for all types of applications in 2002 - 2003 – a doubling of the rate in 2000 when it stood at 6.5%. This is an issue that I give substantive consideration below. It usually takes considerably more time to refuse a visa than to grant one in terms of administration: rising refusal rates will thus increase demands on the posts and staffing. UKvisas has tried to assist with the process of more lawful, uniform and accelerated refusals via the introduction of standardised refusal grounds and other streamlining measures.
  
16. To achieve the rapid processing of visas in the context of such large increases in demand it has been necessary to streamline the visa application process and in many Posts to out-source the receipt of applications to reduce the numbers of personal callers at Embassies and High Commissions. All substantial visa posts now have programmes, or are developing them, by which travel agents and couriers receive applications on behalf of the post and check the presence of documentation. Many also have drop box systems for frequent travellers. UKvisas piloted on-line visas at its New York Post, and recently expanded this service to applicants in Jamaica, Hong Kong, Australia, New Zealand, Finland, Germany, Japan and South Africa. New York is now the centralised visa issuing post for five central American countries. Courier and travel agent systems involve a small additional processing fee for the applicant but they have the advantage of convenience and reducing travel time and costs for the applicants. They also assist in relation to security concerns in that fewer applicants need come into visa post buildings, and also provide fewer opportunities for the corruption that often feeds off physical queues of people. Emphasis is now put on deciding applications without an interview where ever possible, on the use of computer technology giving instant information and processing, and to conducting immediate focused short interviews where seeing the applicant is deemed necessary.
  
17. One of the key UKvisas' Public Service Agreement (PSA) Targets is that of making 90% of decisions in straightforward non-settlement applications to be made within 24 hours. In 2002 UKvisas believes that this was achieved in 91% of cases. Similarly 90 % of decisions in non-settlement cases requiring interview are to be made within 10 days, and this objective was said to be met in 79% of 2002 cases. My sample did not reveal such a high percentage compliance with this target, as only 54% of sample cases were processed within the target time, however I am fairly confident that such targets will be reached in years to come as I saw many posts adopting procedures which routinely lead to decisions being made in a day.

18. Technological developments in the field of bio-data have impacted on the visa system and will continue to have large implications for visa issuing systems and financial costs. The newest version of the entry clearance software, 'Proviso Four', will generate visa vignettes with a photograph included which will make it more difficult for such visas to be falsified, and also will prevent the process of photo substitution whereby the photograph in a passport with a genuine visa in it is changed to enable someone to travel unlawfully.
  
19. All visa applicants in Sri Lanka have been finger printed since July 2003. This project is financed by the Home Office principally to collect data which might be used to identify asylum seekers who have entered on passports with visas, to return them if they are unsuccessful in their asylum claims and to detect persons making visa applications in false identities. A total of seven asylum seekers were identified over the period July to December 2003. In addition two Sri Lankans were prosecuted for obtaining visas by deception. There has been a decline in the numbers of asylum seekers entering from Sri Lanka. The cause of this decline is unclear: it may either be the deterrent affect of finger printing or the peace process in Sri Lanka. Following this pilot, in March 2004, finger printing began in five East African posts (Djibouti, Tanzania, Uganda, Ethiopia and Eritrea). The Home Office hope to detect Somali asylum seekers from this region whom it is believed may be posing as citizens of other countries or actually hold other citizenship, and who are attempting to travel to the UK on genuine passports that have been issued with visas.
  
20. Finger printing of visa applicants is a project driven by commitments made within the European Union that this will be standard amongst Member States by 2008. The United States of America intends to have finger printing at all of their visa issuing posts by October 2004 on the basis that this will increase security. Questions naturally arise as a result of the cost of this multi-million pound operation. UKvisas is now looking at ways to combine the collection of "Biometrics" with outsourcing and is piloting a system in Kampala. Inaccurate data collected either at Posts or in an outsourced environment would of course invalidate the system and also lead to serious consequences for those concerned. Issues of privacy and data protection clearly arise from a project such as this that systematically collects and holds identity data. UKvisas will be examining all these issues in a study to be completed in August 2004.
  
21. Security concerns have affected entry clearance posts profoundly over recent years, and have led to periods of closure or reduced service during 2002 – 2004 at the following posts: Islamabad, Karachi, Lahore, Nairobi, Kampala, Dar Es Salaam, New Delhi, Mumbai (Bombay), Sana'a,

Baghdad, Casablanca, Istanbul, Algiers, Damascus, Tehran and Rome. UKvisas is obliged to put the safety of its staff and applicants first and this has led to additional costs in terms of increased security for buildings as well as a reduced service to visa applicants. Two of three posts I visited for this report were anticipating having to move, in part due to security considerations.

22. The running costs for UKvisas global operation is met from fee income through a fees and charges regime monitored by HM Treasury. In order to ensure that UKvisas income meets its running costs, visa fees were increased on 1<sup>st</sup> July 2002 for the first time in seven years. A six month visit visa now costs £36, as does a student visa, and a direct airside transit visa is now £27. Up until the end of the financial year 2002/03 UKvisas had two Service Delivery Agreement (SDA) Performance Targets: the first is to be self-financing without real increases in the visa fee and the second is to reduce the number of gratis visas. I had some concerns about the latter target. Whilst it would have been legitimate to request that posts ensure that the service they have provided is of a quality that does not require them to refund visa fees, I was concerned that posts should not interpret this as requiring them to avoid receiving applications in free categories such as those entitled to family permits in European law, exempt diplomats, British Council scholarship students and refugee family reunion visas under the 1951 Refugee Convention. The intention of this target was in fact to reduce the number of gratis visas issued to applicants who did not automatically qualify under the Consular Fees Order. This SDA target has, in any case, been withdrawn for the financial year 2003/04.

### **Overview of Non-Settlement Applications for Visas Made in the Period April 2002 – April 2003**

23. The processing of non-settlement applications constitutes 95% of the applications made for visas in this period. The overall refusal rate for non-settlement visas stands at 13%, which has doubled from 6.5% in 2000. The largest numbers of applications are made in South Asia (348,101), Equatorial Africa (294,887) and Central Europe & Former Soviet Union (261,578). In the Monitor's reports for 2001 and 2002 only South Asia and Equatorial Africa had refusal rates above the global average: now not only is this the case for all three largest regions but also for Southern Africa and West Indies & Atlantic.
24. The 10 largest posts in terms of non-settlement visa applications are as follows:

Lagos - Nigeria:	114, 265
New Delhi- India:	85, 220
Mumbai - India:	80, 940
Moscow - Russia:	73, 301
Accra - Ghana:	64, 555
Beijing - China:	62, 162
Islamabad - Pakistan:	57, 274
Istanbul - Turkey:	56, 483
Chennai - India:	54, 319
New York - USA:	40, 281

The 10 posts with the highest rates of refusal are as follows:

Accra - Ghana	51.8%
Kathmandu - Nepal	43.1%
Banjul -Gambia	40.1%
Kinshasa - DRC	39.7%
Dhaka - Bangladesh	37.2%
Rangoon - Burma	36.2%
Ulaan Baatar - Mongolia	36.1%
Harare - Zimbabwe	32.5%
Kampala - Uganda	27.4%
Kingston - Jamaica	27.3%

If these figures are compared to the 2002 Monitor's report it can be noted that the percentages are all higher, ranging from 27.3% to 51.8% compared to 20% to 45%, which in turn was a significant step up from the 2001 Monitor's report where the range was 16.1% to 25.6%. It is significant to note that in 2002, for the first time, a Post refuses more visas than it grants.

Six posts within the current list were not posts within the 2001/02 top ten list of highest 'refusers'. I believe this merits consideration. Kingston can be explained as it was not previously a visa national country and Kinshasa as it was not an operational post in the previous period. Banjul (rose from 14% to 40.1%), Rangoon (rose from 18% to 36.2%), Ulaan Baatar (rose from 19% to 36.1%), Harare (rose from 21% to 32.5%) and Kampala (rose from 14% to 27.4%) have all had very drastic increases in their refusal rates – essentially refusal rates have doubled for these posts over a year. In contrast, at least one Post with a high refusal rate in 2001/2, Khartoum, went down from a refusal rate of 31% to 13.4%. I would recommend that checks need to be made where posts which deal with a significant number of applicants have dramatic rises or declines in their refusal rates. Systems need to ensure that any drastic increase in refusing applicants is reflective of the quality of applications rather than a more restrictive

regime, and vice versa. It would equally be of assistance to UKvisas if research could be done into the increasing overall refusal rate. I recommend that research is commissioned to establish whether rising refusals reflect greater numbers of poor quality applications or whether there are other less legitimate factors involved.

25. My above recommendation is made in the context of research done by Citizens Advice on family visit applications, which I do not monitor.<sup>3</sup> The refusal rate for family visits has risen dramatically: in the year 2000 it stood at 15.4% whereas in the year 2002-2003 it had reached a global figure of 24.4%. The research notes that the rate of refusal has risen in steps, with a marked step increase in the autumn of each year over this period, raising questions as to a link with a seasonal hardening of attitudes connected to the atrocity of September 11<sup>th</sup> 2001. There is also a notable correlation of the seasonal increase in refusals with the seasonal decrease in applications, posing another explanation that refusal rates rise at times of lesser stress on decision-making entry clearance officers (ECOs). This Citizens Advice research also notes that within the overall rate there are some very dramatic increases, for instance a contrast between the first half of 2002 and the second reveals a 104% increase in Mumbai (Bombay), a 105% increase in New Delhi, a 188% increase in Tehran, a 124% increase in Moscow and a 102% increase in Beijing. There have been discussions at the UKvisas User Panel with the Parliamentary Under-Secretary of State, Foreign and Commonwealth Office, Mr Chris Mullen MP and the Parliamentary Under-Secretary of State, Home Office, Ms Fiona Mactaggart MP about this issue, and correspondence between Citizens Advice and UKvisas. I join Citizens Advice in recommending that, in the absence of any certain explanation for these statistics, research be commissioned into the complex issue of seasonal variations in refusal rates.

26. Refusals of visitors and students without the right of appeal represent just under half the total refusals of non-settlement applications in 2002. UKvisas is attempting to increase its understanding of applications made through the Central Reference System (CRS), a database which stores visa application data from all Posts which use the PROVISO computer system. This system came into operation in 2003 and UKvisas has concerns that given the newness of the system that data may not be accurate. Clearly without accurate data being entered by posts UKvisas will have added difficulties in managing the visa system. I am sure that Posts have been informed of this fact, and am aware that UKvisas is

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<sup>3</sup> See "Family visitor visa applications: an analysis of entry clearance officer decision-making in 2002" by Richard Dunstan, Immigration Policy Officer at Citizens Advice published in *Immigration, Asylum and Nationality Law*, Vol 13, No 3, 2003

about to start work on a PROVISO Best Practice User Guide which will give clear guidance to Posts as regards data entry and other functionalities within PROVISO.

27. The CRS data indicates that 16.5% of the refusals in the monitored group were students and the rest (83.5%) were visitors. This accords well with the data from my sample. The CRS data indicates that 60% of applicants for non-appealable visits were men, and 40% women. The information available through CRS indicates that those refused in the visitor group I monitor in 2002 were 57% men and 43% women. This again seems a plausible statistic in the light of my sample. The percentage of men and women refused is the same in the top ten refusal countries for 2002 as for the entire sample. The percentage of refused students shows a much higher proportion of men to women: women were only 31% of this group, where as men were 69%. However the statistic is put in context by the fact that women made up only 39% of the applicants for student visas of all lengths. The CRS data might lead to the tentative conclusion that women are more likely to be refused a visit visa than men, but more likely to be granted a student visa. It is to be noted that the CRS system is not yet sophisticated enough to provide the type of profiling that the previous Entry Clearance Monitor, Rabinder Singh QC, had hoped would be available<sup>4</sup>. I recommend that the CRS system be refined so that it is possible to understand the number of students in the non-appealable group who were granted visas and to enable a breakdown by marital status.

## **Analysis of the File Sample**

### **Basis of the Sample**

28. The core part of my work is to read and analyse a randomly selected sample of 1080 refused files supplied to me by UKvisas from 149 posts. A total of 110,554 refusals coming within my remit were recorded in the UKvisas data systems for the year 2002. A DfID computer is used to select 1% of all refusals and one file per post. For posts with less than 105 refusals one application is selected by the computer at random, for posts with more than 105 refusals one refusal in every 104/5 is selected starting with a randomly selected number. I note that the sample has been reduced from the approximately 2% sample, of between 1800 and 2000

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<sup>4</sup> Report of Independent Monitor November 2002 para 22, where he hoped the CRS system might test the proposition that young, single men from Indian sub-continent were statistically less likely to get visas than others.

files, reviewed by Dame Elizabeth Anson in her reports.<sup>5</sup> This was done when a right of appeal was re-introduced for family visitors. According to the Home Office a random sample of 1080 files enables me to infer that generally my statistics will lie within +/- 3% (at 95% confidence levels) of the corresponding figures for the overall group of 110,554 refusals.

### **Limitations of the Review**

29. It should be noted that this exercise has a number of limitations. As mentioned above I have to produce a report based on 40 days work: 10 of these days are spent abroad and a further 10 days must be spent meeting with interested parties, reading relevant background materials and actually writing the report. This means, if done within the time allowed, that 54 files have to be read each day: clearly this does not allow for any detailed analysis. I am grateful for UKvisas agreeing to pay me for an extra three days work this year due to the larger than expected number of files. In order to obtain an overview of the files I have processed them using a database against criteria I developed during an initial scoping exercise. I hope to refine this database for future reports.
30. Apart from time constraints there are other limitations on this exercise. It should be noted that in 2002 a wide number of IM2A forms were being used for the making of applications: I noted some forms without any date at all while others had the following dates 5/93, 10/96, 2/01, 7/01 and 12/01, and some posts like Lagos had developed some extra pages for family information. The consequence of the use of different forms was that I was not provided with the same basic information in relation to all applicants. For instance not all forms requested information about whether the applicant had children, so my statistics as to the number of applicants with children will under-report. This may not be a problem in future years as I understand that it is now compulsory for all applications to be made on the VAF1 form introduced in 2003. I recommend that all old forms be thrown away and not be accepted so that entry clearance officers (ECOs) and I have the same information from all applicants. I also recommend that there should be no ad hoc additional forms in the future.
31. In addition it should be noted that the forms themselves are printed and completed in many different European languages (I noted French, Spanish, Serbian, Slovak, Italian, Danish, Russian, Bulgarian, Albanian, Romanian, Portuguese, German, Turkish and Danish), and that documents are for the most part un-translated. Needless to say I am not proficient in all of these languages, and certainly was unable to read or

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<sup>5</sup> Report of Independent Monitor July 2000 page 34 para 6.1

even know the nature of documents in, for instance, Amharic and Swahili. I do not recommend that documents be translated as this would be inordinately expensive, however it would be helpful if ECOs could note on supporting documentation the nature of the document at least. This was done by some posts, such as Bogota, where staff placed explanatory notes on Spanish documents. I understand that following a request from the Immigration Appellate Authority all forms will be in English. I believe that UKvisas will provide translations of the forms however. I recommend that UKvisas consider whether an equal service is being offered to all applicants if the forms are only translated into European languages. I am sure Chinese English language students, of whom there are substantial numbers, would appreciate a form translated in their own language, for instance.

32. Within the time constraints I was also unable to convert in to sterling the value of the financial documents in many currencies, which in turn has limited my ability to assess financial documentation and monitor ECOs' assessments of means. I recommend that ECOs convert amounts of money into sterling so that the value of resources available is apparent on the file – some already follow this practice and it makes their decision-making far more transparent.
  
33. A final constraint on my ability to review files has been issues of legibility and missing documents. About 3.5% of files had illegible interview notes or personal short-hand which rendered the interview notes incomprehensible so that no review of the file could take place. Another 9% had no interview notes or other vital documents (for instance the refusal itself or a related file which contained the interview notes on which the decision was based) which rendered a review impossible. I am aware that ECOs are instructed not to use personal short-hand, that there should be question and answer interview notes rather than brief notes arising from the interview, and that notes should be legible. I also realise that issues relating to handwriting will become less and less important as the majority of ECOs use computer terminals and type their notes as well as the decisions, which are now universally typed and legible. I do recommend strongly however that there should be full interview notes and not just brief notes, as notes alone do not provide a sufficient basis for reviewing a decision. Dame Elizabeth Anson also held the view that a "Question and Answer" form was preferable<sup>6</sup>, and this practice is advocated in the Best Practice Guide to Entry Clearance Work.

### **Accuracy of the Sample**

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<sup>6</sup> 2000 Report of Independent Monitor page 26 para 5.7

34. In my opinion 12.8% (138) of the files provided to me ought not to have been within my sample. This is a worrying statistic as it indicates inaccuracies in the UKvisas' data systems which might adversely affect management decisions. This set of files breaks down into two groups: the first are ones that are simply and obviously wrongly categorised. This groups accounts for 31 of the 138, 22% of the wrongly categorised files. For instances I have had been sent files relating to applicants who were granted visas, applicants who were pre-sifted and did not proceed, domestic workers, seasonal agricultural workers, a working holiday maker, charity volunteers, the dependent of a highly-skilled migrant and a large group of Sikh religious dancers (Kirtanis) who applied under a concession for permit free employment outside the rules. Some of these applicants had no rights of appeal and some had been properly accorded them, the majority however had been wrongly denied appeal rights<sup>7</sup>. I recommend that entry clearance managers (ECMs) are reminded of the criteria for logging matters relevant to the Monitor, and also that those who apply under concessions outside the Immigration Rules, or whose applications are dealt with under such concessions are entitled to contend that the decisions are not in accordance with the law.

### **Applicants Wrongly Denied Rights of Appeal**

35. 9.9% of my entire sample consists of students and visitors who ought, in my opinion, to have been accorded rights of appeal as they ought to have been categorised as students on courses of more than six months or family visitors. If I am correct, by extrapolation from my sample, this means that 10,000 applicants were wrongly denied the right of appeal in 2002. Just under a third of those denied the right of appeal in this group were students, the remaining two thirds were family visitors. I have referred all of the individual cases in my sample to UKvisas with recommendations that the applicants be contacted and offered a new gratis application for a visa if they so wish. In many cases UKvisas have agreed with my assessment and the post has contacted the applicant with this offer. It is gravely concerning that almost 10% of those denied rights of appeal are not the applicants whom Parliament intended to be denied such a right. Parliament may wish to consider this when and if consideration is given to removing other rights of appeal.

36. Based on the files I have reviewed I believe the parameters for the right of appeal are being wrongly applied as follows:

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<sup>7</sup> Adbi (Dhudi Saleban) v Secretary of State for the Home Department [1996] Imm AR 148, although from 1<sup>st</sup> April 2003 note the impact of s.88 of NIAA 2002 which removes the right of appeal for those apply under concessions unless there is an argument that the decision breaches the applicant's human rights or is racially discriminatory.

- Family visitors are being denied rights of appeal as the ECO fails to correctly recognise that the family member being visited is on the list of qualifying family members.
  - Family visitors are being denied rights of appeal on the basis they are “not related as claimed” when this should be an issue within any appeal.
  - Family visitors are being denied rights of appeal on the basis that the family member in the UK is not settled.
  - Family visitors are being denied rights of appeal where they have a dual purpose to their visit to the UK.
  - Students are being classified as on a course of six months or less simply because a module of their course lasts less than six months.
37. It is my understanding that UKvisas are in agreement with my position on the above with the exception of dual purpose family visits. I also understand that UKvisas has issued a telegram (ACEIP) to posts in relation to the student issue.
38. I would like to make it plain that I do not hold ECOs responsible for the problems with rights of appeal being wrongly denied. I do not believe that they have adequate instructions to make the decisions consistently and in accordance with the law.
39. ECOs have access to the Diplomatic Service Procedures (DSPs) – guidance and illumination on entry clearance work in general, categories under the Immigration Rules and various concessions which operate outside these rules. The DSPs give a short piece of guidance on family visits at 26.3.1 in which ECOs are advised to seek clarity on any relationship with a family member and generally not seek documentary evidence of a relationship unless there are strong reasons to doubt it. This is good advice but does not go far enough to explain that any allegation that the applicant is ‘not related as claimed’ ought to be an issue that does not bar a right of appeal, but rather is dealt with within an appeal.
40. Entry Clearance Officers are also reliant on telegrams called ACEIPs (All Entry Clearance Issuing Posts) for up-dates on policy and changes in the law as the DSPs lag behind changes in policy and law. There is one

ACEIP that appears relevant to this issue, number 16, issued on 31/1/2003, which states as follows in relation to the 2002 Act:

“S. 90 defines more clearly those entitled to appeal as family visitors (despite the confusing title). It says an appeal may be brought only if the application was made for the purpose of visiting a family member. This will clear up the confusion a number of Posts have experienced with determining whether a business visitor or medical visitor who also intends to stay with family has the right of appeal. They will no longer qualify, but will keep a right of appeal on human rights grounds & race relations grounds which, again, we may have to tell them about.”

I believe that this is simply wrong. S. 90 of 2002 Act does say that to be entitled to a right of appeal an application must be made for the purpose of visiting a family member but it does not say for the sole, main or primary purpose of visiting a family member. ‘For the purpose of visiting a family member’ would exclude a visit where visiting family was merely incidental to the visit but all other family visits must qualify for an appeal. I recommend that the advice in this ACEIP should be withdrawn.

41. It is to be remembered that access to the Immigration Appellate Authority is recognised by the common law as a fundamental or constitutional right akin to the right of access to the courts<sup>8</sup>. The exclusion of the right of appeal must therefore be strictly construed, and where this is in doubt a right of appeal must be accorded. In addition I have read the relevant sections of the Labour Party Manifesto 1997, the 1998 White Paper “Fairer Faster Firmer”<sup>9</sup> and the Parliamentary debates from November 2000 in both the House of Commons and House of Lords concerning the Immigration Appeals (Family Visitor) (No 2) Regulations 2000, and can find no evidence that Parliament or the Government intended a family visit appeal to be accorded only where the family visit aspect was the ‘primary’ purpose of the visit. Indeed it would seem that the Government based its predictions of the number of family visit appeals likely to be received on figures which must have included what the then Monitor, Dame Elizabeth Anson, termed all applications with a “family flavour” but which were also business, medical or study visits.<sup>10</sup>

### **Recommendation with Regards to Appeal Parameters**

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<sup>8</sup> R v Secretary of State, ex parte Saleem [2001] 1 WLR 443

<sup>9</sup> CM 4018 Chapter 5

<sup>10</sup> See House of Commons Debs 20 November 2000 volume 357, col. 120 Mr Straw and col. 127 Mr Lidington

42. I recommend that guidance be given to ECOs. The following should be inserted into the DSPs and sent as a telegram/ ACEIP:

- The list of family members should be reiterated and ECOs reminded to check it in cases of doubt.
- ECOs should be reminded that in the absence of proof that the applicant is not related to the family member in the UK that a right of appeal must be accorded. The ECO is free to raise this as an issue in the refusal where he or she believes that the applicant is not related as claimed.
- ECOs should be reminded that there is no requirement that a family member be settled or have leave to remain in the UK. Any family member present in the UK qualifies the applicant for a family visit appeal. If the ECO does not believe that the family member is present in the UK then he or she is free to raise this as an issue in the refusal.
- That a right of appeal be accorded to all those visitors who designate their visit as a family visit to a qualifying family member on the visa form or at interview, and also to all who will be staying with a qualifying family member. The right of appeal in the case of dual purpose visits may only be denied where the family visit aspect is merely incidental.
- That in relation to students the length of course, for the purpose of appeal entitlement, is precisely that and not the length of a module. The length of the course should be given in the letter from the educational institution.

### **Breakdown of Sample between Visitors and Students**

43. The sample of refusals relates very largely to visitors. 83.1% were visitors whilst 16.9% were students. The largest group of visitors refused were tourists, followed by those visiting more distant family members and friends, then business visitors and those transiting the UK. The majority of students wished to come to the UK to study English as a foreign language.

### **Streamlined Decision Making**

44. The refusals I reviewed for 2002 were taking place in the transition to streamlining. I noted very stark differences in decision-making times

between posts, and for the same post in different periods within 2002. 24 posts (16%) dealt with matters within an average time of one day, and a total of 80 posts (53.7%) dealt with matters within the target time. Of the 10 largest posts only three (Accra, Lagos and Istanbul) failed to deal with matters within the target 10 days. 11 posts had average decision making times of over 50 days, although only in relation to Lagos (where the average time taken was 78 days) was this average based on a number of cases of more than 5, so these may be aberrations based on too small a sample. There was no apparent correlation between the posts with highest refusal rates and the length of time taken: half dealt with matters within the target of 10 days and half did not. The length of queues has rightly been a concern of previous Monitors,<sup>11</sup> however I am reasonably confident that UKvisas has addressed this issue together with staff at Posts and that subsequent reports will show decisions being routinely made within the 10 day target.

45. Streamlining has led to the removal of the pre-assessment (pre-sift) process as it is incompatible with the speed at which the system must now operate, and the need to generate funds for its administration. UKvisas does advise that it ought to be occasionally utilised, on a common sense basis, in circumstances such as an elderly person wishing to visit the UK when their passport is about to expire. Although my predecessor, Rabinder Singh QC, recommended that an independent study be done to evaluate the procedure this was not carried out, and posts were simply advised that it was not consistent with a 'transparent and fair service' in August 2002<sup>12</sup>. I note that in 1.3% of the cases I reviewed I found evidence of pre-sifting continuing, and I will monitor to see whether this figure diminishes in 2003. I anticipate that it will. I do not believe that it is appropriate for pre-assessment to continue on an ad hoc basis, except in the type of case outlined above.

46. Another aspect of streamlining is the reduction in the time for interviews, and indeed the role of the interview. In general terms I support the lesser use of interviews. This should be seen in the context of a 13 page visa application form (VAF1 2003) which replaced the series of previous forms, which were between 2 and 4 pages long. I draw attention however to the decision of the Immigration Appeal Tribunal that a decision of the ECO in Lagos breached the most basic rules of natural justice because no interview took place in a visit application<sup>13</sup>. The refusals that I reviewed in 2002 were all done with the benefit of an interview except a number of matters that were 'cleared up' in Lagos prior to the introduction of

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<sup>11</sup> Independent Monitor's Report November 2002 para 33

<sup>12</sup> Independent Monitor's Report November 2002 para 40

<sup>13</sup> [2004] UKIAT 00026 O (Nigeria)

streamlining. I anticipate that in the files relating to 2003 and 2004 I will see decisions where no interview has taken place. I am aware from my visit to Harare that since Zimbabweans became visa nationals at the end of 2002 the emphasis has been on making Fedex the main route of application and on deciding non-settlement Fedex applications without interview. Careful consideration will have to be given to the way in which applications are refused without an interview: I believe that unless the criteria involved become more objectively founded and transparent to applicants that breaches of natural justice will follow. I understand that UKvisas is drawing up advice to Posts on this issue.

47. Streamlining has also led to the introduction of tick box refusals and “drop down menu” refusals. I found that the tick box refusals were innately of poor quality as they do not relate general propositions with the facts of any case. I was pleased to note that they were withdrawn in Ghana after a trial period of use between June and August 2002. UKvisas advises me that they are no longer used anywhere. Drop down menu refusals could potentially be time saving but unfortunately the formulations are not in what I would regard as plain English, and include propositions I do not believe relate closely enough to the Immigration Rules. I discuss this issue below. I also recommend that the ECO training notes are amended in relation to the instruction: “ DO quote more than one reason for refusal. If only one reason is quoted this suggests the decision is weak and could succumb to pressure to have it overturned.” In the sample I monitored I repeatedly saw weak, improper and irrelevant reasons added to perfectly good ones. This only weakens the refusal. ECOs should confine themselves only to pertinent and relevant reasons. I believe often this will be a single issue.

### **Grounds of Refusal: Intention to Leave the UK and Abide by the Conditions of Leave**

48. The overwhelming majority of refusals are made for reasons which address the requirements of the Immigration Rules<sup>14</sup> that visitors and students (who are not studying at degree level) should intend to leave at the end of their visit/studies, and to a lesser extent that visitors should not intend to work and that students should intend to follow their course. An ECO must decide on the balance of probabilities whether an applicant will breach the terms of their visa in such a fashion. There is no doubt that this is, at the very least, a difficult issue for an ECO to determine within the 10 minutes given for an interview in such a case. However I think it is worth appreciating that the current criteria applied have very little nexus with the

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<sup>14</sup> I attach the main paragraphs of the Immigration Rules HC 395 concerning students and visitors as Annex C to this report

crucial issue that they purport to address, and as such do not facilitate rational decision making. It is my belief that the current criteria have evolved over a number of years and due to stress of work there has been little consideration as to whether they are assisting enquiries into this complex issue.

49. The previous Monitor, Rabinder Singh QC, has raised the issue of the demographic profile of those refused<sup>15</sup>. He indicated that it was a perception amongst some Members of Parliament that young single men were unjustifiably subjected to higher refusal rates than others. I can confirm that the categorisation 'young single man' does appear in 23 of the refusal notices I reviewed as a reason to refuse, and is noted in many more files in interview notes and under the notes section of the form. In fact only 29.1% of the sample of refusals were single men. Just under half of the entire sample were married men and women with jobs, and this rises to precisely half in relation to visitors as opposed to students. Indeed a very similar number of married men and women with jobs and children are refused as single men. Thus there is no prevalence of single men in the refused sample. Whilst it is true that 79% of students in the refused sample are single men and women I would be very surprised if this were not equally the case for those granted student visas because students are traditionally young, single people (sadly UKvisas new Central Reference System cannot give data with reference to marital status to verify this). To sum up: in relation to students I believe that young, male and single does not distinguish in any way between those granted and refused and should thus not be used as a basis for refusal; in relation to visitors there is no evidence to support a great propensity to overstay or breach conditions by this group, and this is reflected in the fact that a relatively low percentage of visitors refused fall within this category. I recommend that 'young single male' is not used as a basis for refusal and that ECOs be made aware that it is not a 'profile' for refusal in any sense.
50. Two grounds of refusal which immediately appear to be 'Catch 22' criteria are that the applicant knows no one in the UK and has not travelled before (found in 12.9% of refusals of visitors). Whilst having travelled will undoubtedly be the best empirical evidence that an applicant will return having not yet travelled is not the converse of this: an appropriate converse ground for refusing would be where an applicant has previously overstayed leave to remain in the UK. Needless to say everyone travels for the first time and it is simply not a reason to refuse as it does not distinguish between the person refused and many thousands granted visas. It is very surprising that knowing no one in the UK should be seen as a reason for refusing as a conflicting set of logic is also at work: in other

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<sup>15</sup> Independent Monitor's Report November 2002 para 22

refusals it is seen fit to extrapolate from the migration of the persons being visited in the UK to the intentions of the visitor to do the same. Further I have seen “knowing no one” used in the most obviously unreasonable contexts: a person who wished to come to the UK to buy a wedding dress was refused for not knowing anyone in this country. I can see no basis on which knowing no one in the UK is likely to cause someone to overstay or work in breach of their conditions, or that it is in anyway inconsistent with a genuine visit. I recommend that these criteria are not used.

51. Previous visa refusals are seen as highly pertinent to any current application for a visa. Applicants’ bona fides are routinely brought into question if they fail to answer the questions about past visa applications to other countries accurately, even if they correct this without being prompted at the interview. I believe there is a possibility of genuine misunderstanding of forms and recommend that any applicant who gives the correct information at interview should not be held to have attempted to mislead the ECO if the form was incorrect. I do not think that it is correct to hold against applicants refusals of visas by other countries. It has consistently been put to me by visa staff at all levels that certain other countries do not operate a system of granting visit or student visas which approaches British standards of fairness. The little information I have on this topic tends to confirm this view. Unless an ECO makes detailed enquiries regarding the refusal it should not be placed in the balance against an applicant. A particularly unfair and curious variant on refusing for having not been granted a visa by another embassy is to hold against the applicant that they have not approached another embassy for a visa first, in circumstances where a trip will need two or more visas. Clearly if other embassies took the same view it would be impossible for applicants visiting two countries to travel. I recommend that this practice stop except in applications for transit visas: there is no proper basis for saying that applicants must obtain their non-transit visas in any particular order.

52. The REF 1 refusal form which is used to refuse applicants within this sample states underneath the grounds of refusal that: “The decision in this case will not prejudice any subsequent application should you wish to reapply at a future date.” It should be noted that this was put forward by the Government as a safeguard to applicants when the right of appeal was removed<sup>16</sup>. At present this is simply not true and is misleading: explicitly within 32 of the refusals in my sample a previous refusal was mentioned in the grounds. Further the IM2A (version 12/01) used in Colombo states as follows: “If you have been refused a visa before it is unlikely that your visa will be granted unless the reasons for your refusal have changed”. If an applicant complains about a refusal they will often receive a standard

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<sup>16</sup> Earl Ferrers, HL Debs 16 February 1993, vol 452, no 96, cols 1041-2

reply, such as the one used in Colombo, which states: "You are free to reapply for entry clearance at any time, but I should warn you that unless you are able to present fresh evidence or establish a change of circumstance, any further application is unlikely to succeed." I recommend that a decision be made: either the statement on the refusal remains and ECOs make their decisions without reference to previous refusals whatsoever and preferably in ignorance of their existence, or it is removed and explained to applicants that a previous refusal is prejudicial: not a prohibition but a negative factor which must be overcome in the new application.

53. Another ground of refusal that I find unacceptable is a judgment that the applicants will not return or will breach other conditions because others associated with them have done so. An example is a Romanian man who applied to visit a friend in the UK who had gone to study and had progressed to stay lawfully on the basis of a job. The application was refused because: "I cannot be completely satisfied that you would not attempt to do the same." I recommend that it is not lawful to refuse a visa application on the basis that the applicant is associated with someone who has lawfully varied their leave, further I recommend that where someone associated with the applicant has remained unlawfully that this can only be a basis for refusal if the ECO can point to a reason as to why the applicant might do the same.
54. An equally unacceptable basis for refusal is a simple allegation that people in the country of application have a lower standard of living. For instance the following was said in relation to a Gambian applicant: "I am also aware that a higher general standard of living would be available to you in the UK than is open to you here". This simply does not distinguish between the applicant refused and many others granted visas, and I recommend that grounds based on the general economic situation in a country should not be used for this reason. This basis for refusal may also easily become unlawfully discriminatory, as it will premise the refusal on an unsupported assumption about 'national' behaviour in the context of the state's economic problems. I refer to my observations and recommendations in relation to this issue below.
55. ECOs can of course validly raise the issue of any previous overstaying of a visa or working in breach of conditions. This would be one of the best types of evidence available that the applicant was not genuine. I have seen a worrying variant on this basis which I do not regard as lawful however: ECOs seem to find the potential that a variation application may be made in the future by the applicant or the fact that they stayed for a longer period than they suggested at interview but still one within the

period of leave granted on a previous occasion as a basis for refusal. In particular I draw attention to the fact that applicants who may potentially marry EU nationals ought not be refused a visa on the basis that it is possible that they may make an application in-country to stay as a spouse, as I saw in one case I reviewed. If the marriage is planned then it may be appropriate to suggest the applicant apply as a fiancé/ fiancée. If it is not then a visit visa cannot be refused on the basis of a potential future marriage, and further the applicant ought not be advised that they will need to leave the UK to apply for a family permit if they do eventually decide to marry, as was advised on the file I reviewed. I recommend that it is clarified with ECOs that remaining within a period of leave granted and extending/ varying within the rules in the UK are perfectly acceptable activities complying with immigration control and should not be used as a basis for refusal.

56. A common ground of refusal is that the applicant's planned visit is deemed 'at best vague'. This is often connected with a failure to have a clear itinerary of tourist destinations, although on one occasion an ECO set out that lack of knowledge of the bus route between Sofia and London was a ground of refusal along with an allegation that the applicant was not a genuine tourist as he did not understand he should be visiting one of his chosen tourist sites, Westminster Abbey, because it was a "place of interest". Lack of knowledge about tourist sites was a basis for refusal in 11.7% of visits. It is my opinion that this criterion was almost never applied in an appropriate fashion. There is no logic to thinking that an applicant who wishes to rely on their UK-based friend or family member or an organised tour to show them around is less likely to leave the UK at the end of their visit than an applicant who has decided to formulate and remember an itinerary. Indeed interview notes make it plain that some ECOs are equally suspicious of an applicant who has 'obviously learned' a schedule of sites – although how else they would know them escapes me. In addition the questions put to the applicant rarely allow the ECO to fairly allege that the applicant is vague: the applicants routinely answer the questions without giving much detail, but it is not accurate to allege that they are vague as they are not told that if they do not go into detail this will be held against them, neither are they informed that their answers are insufficiently detailed and asked to elaborate.

57. Linked to the allegation of vagueness is an associated one to do with a lack of booked hotels and tickets: I am aware that some posts advise all applicants bar transit passengers not to book tickets or hotels until they have their visa. I endorse this approach. It is not right to require bookings which will cost money before a visa is obtained. I also noted that a UK based company wrote to complain about a refusal of a visa to a Nigerian business woman and commented: "If Mrs O appeared unclear about her

accommodation in the UK, that is because we will collect her from the airport and are making the hotel bookings. Everybody in the world does this for visiting overseas clients, and we have already advised you of this.”

58. I recommend that there should be no enquiry into tourist itineraries by ECOs unless the applicant is going to visit as an independent traveller who knows no one in the UK – and then the appropriate questioning might be as follows: Have you already organised a schedule for your trip? If you have not, how will you do this? It should be accepted that the detailed planning might be done after obtaining a visa. I also recommend that it should not be a negative factor that tickets and hotels have not yet been booked.
59. In 9.7% of the sample I assessed that the word “credible” or “credibility” had been used inappropriately in a refusal. ECOs found many things to be “not credible” which simply were not within the meaning of this word. A few examples demonstrate the problem. In one refusal it was “not credible” to travel with a four month old child, in another an ECO commented “Why take 2 young kids for 18 day hol.”; in another it was “not credible” to take an 8 year old child on a shopping trip; and a Muslim applicant was found “not credible” on the basis that he was leaving his wife and child and travelling for Christmas & New Year to the UK, despite the fact these were not festivals within the family’s religious calendar. In various refusals it was “not credible” that applicants would travel with or without their pregnant wives. ECOs found generous behaviour particularly incredible: it was “not credible” that British Citizens would issue invitations to applicants they had met abroad to reciprocate for enhanced holidays or just reflecting a friendship that had developed. It was also “not credible” that family members would pay for trips, or indeed that people would spend a large sum of money on a trip. It was “not credible” to spend more than a certain multiple of your monthly salary (on occasions as low as 2 times), even if the trip was being funded out of savings. It was also “not credible” to want to see a friend or a family member that the applicant has not seen for a while unless there was a special reason leading to the current visit plan.
60. The words “credible” and “credibility” have a tendency to be over-used in the immigration sphere. Inaccurate use of this word was also noted by Dame Elizabeth Anson<sup>17</sup>. I recommend that ECOs only use lacking credibility as a basis for refusal in accordance with the dictionary definition of the word “incredible”: to indicate where the plans are beyond belief, in the sense of being absurd, or where there is tangible evidence to say that the applicant is not trustworthy.

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<sup>17</sup> Independent Monitor’s Report July 2000 page 29 para 5.22

61. Perhaps underlying the unsubstantiated 'credibility' refusals is the issue of refusals based on value or moral judgements of individual ECOs. I do not find this acceptable. It is not for ECOs to refuse on the basis that applicants should not be spending money on a "pleasure trip" when their wives are pregnant, or they have families to support. Applicants should not be refused as they do not "need" to visit the UK or because they are "not economically in a position to justify spending so much money". An allegation that the applicant puts pleasure before his/her family is a long way from the issue at stake, namely will (s)he work in breach of his conditions or stay beyond the time limits (s)he is given. I recommend that such considerations form no part of the basis for refusal, and note that Dame Elizabeth Anson took a similar view in her 2000 report<sup>18</sup>.
62. It is to be appreciated that ECOs work under extreme pressure, however I have found a worrying problem that decisions do not follow from the facts as given in the documentation or as established in interview. This was particularly the case in relation to allegations that the visit applicant was vague or ill-planned, or in relation to students who did not know details of the course they were attending. I believe in 20% of refusals this was an issue. This was also a concern that Dame Elizabeth Anson expressed.<sup>19</sup> I recommend that greater care be taken in relation to factual assertions in refusal notices, ensuring that findings of fact reflect what is said at interview, in the documents or in the form.
63. ECOs should not expect medical visitors to be able to explain their medical conditions or those of their children. I read a very distressing case from Lahore where a man was refused a visa to travel to the UK for treatment because he did not understand the reasons behind his condition. This, it was said: "casts considerable doubt on your bona fides as a genuine medical visitor". It is not a requirement of the Immigration Rules that such applicants should have any understanding of medical matters: it is the letters from the doctors which should explain the condition and treatment required. The same applicant was also refused on the basis that treatment is potentially available in Pakistan, which is also contrary to legal authority<sup>20</sup>. I recommend that ECOs be instructed not to refuse on this basis. Further I have noted refusals on the basis that the applicant does not know the precise length of treatment, when there is legal authority that this is not a requirement so long as the treatment is of finite duration<sup>21</sup>.

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<sup>18</sup> Independent Monitor's Report July 2000 page 15 para 3.8 & page 17 para 3.15

<sup>19</sup> Independent Monitor's Report July 2000 page 29 para 5.21

<sup>20</sup> Mohan [1973] Imm AR 9

<sup>21</sup> Foon [1983] Imm AR 29 and Onofriou (2704)

64. I urge great caution in ECOs becoming experts, particularly in business matters. It is not the role of an ECO to say that a particular industrial machine could not be 10 times cheaper in the UK than Thailand; or that it would be better to buy 24,000 greetings cards over the internet than travel to the UK; that a business trip from Tunis was implausible because beauty and hair products are 'notoriously expensive in Britain'; to allege a sponsorship deal for a soft drinks distributor in Bulgaria was speculative or that training in diagnostic equipment for cars should be done with the manufacturer rather than through a consultant. If an ECO does have technical expertise that (s)he applies in this way (s)he must say how (s)he is expert. I recommend that generally that this is not done however.
65. Many visits and short-term student visas are refused on the basis that they are not commensurate / are disproportionate with the benefit to be gained, or with the social, personal and economic circumstances of the applicant. I do not believe that this basis for refusal is easy to understand for applicants, or ECOs. It contains two quite complex equations: firstly a cost-benefit analysis of the trip and secondly a judgment that a person of the applicant's social class and income bracket would not normally make such a trip. The ground of refusal is rarely related to any factual information which might illuminate what it means. I will look at each aspect of this basis of refusal in turn.
66. In relation to the cost benefit analysis the following example is instructive: an applicant from Ghana who explained that he hoped to obtain enlightenment by attending a religious conference in the UK was refused on the basis that the cost of the trip was not commensurate with the benefit he would gain. It was not suggested that he did not have enough money for his trip, nor was it suggested he did not have an incentive to leave the UK. I cannot think that the ECO really thought that the cost of a flight from Accra to London was too high a price to pay for enlightenment, and I very much doubt that the applicant would have made any sense of the refusal as it does not relate closely enough to the Immigration Rules which apply to him. It is my opinion that it is not possible to put a value on trips to family members, friends or indeed tourism and so such trips ought not to be said to be incommensurate with the cost. In addition I do not believe there is any empirical evidence for saying that those who spend more on a visit, in relation to their overall financial position, are more likely to breach controls or overstay than those who spend a lesser amount. I recommend that refusals are not made on the basis that they are not commensurate with the cost in these cases.
67. Business trips undoubtedly do have an element of balancing costs against benefits but this cannot be sensibly evaluated in an ad hoc fashion

in a very brief interview. If cost-benefit analysis is required then a written plan addressing this issue ought to be requested, particularly as the applicant travelling may legitimately not be able to articulate why it is worth while for him or her to travel: for example the applicant may be an engineer going to check and purchase a piece of machinery who does not understand why this is the cheapest option since it is his employer who has decided that the trip should take place. Consideration must also be given to business not being an exact science: good will and security may come out of a personal visit which on the face of it is more costly than other methods. I recommend that either this basis for refusal is dropped or that it is turned into a requirement for a written document from the business.

68. Students studies are held to be non-commensurate with the cost on a frequent basis: again I find the decision making unsatisfactory at a number of levels. Students often say that they wish to study to enhance their job prospects: ECOs then allege that the cost of the course will not be recouped by the increased salary which may be gained. The time allowed for interviews and the lack of precise figures means that a refusal on this basis will rarely be factually sound, further it also omits from the equation the issue of job satisfaction and desire for education. In relation to students this basis for refusal is too far away from the requirements of the Immigration Rules. Simply because a strict financial cost-benefit analysis is not met does not mean that the applicant will not genuinely study and leave at the end of their studies. I recommend that this basis for refusal is not used in relation to students.
69. I will now turn to the issue of studies and visits being disproportionate / non-commensurate with the social, economic and personal circumstances of the applicant. First I need to clarify that this is not an allegation that the applicant does not have the funds for the trip. The ECO has accepted that sufficient funds exist but the bona fides of the applicant are put in doubt because it is alleged that a person of their social class, educational background and income bracket would not normally study or visit in the way they propose. One ECO put such a refusal as follows: "Your previous international travel history consists of a 2 day trip to Greece this year. International travel for tourism is clearly not part of your normal lifestyle."
70. This basis for refusal operates in a similar way to the refusal of applicants because they have not previously travelled. The implication is that sectors of society will not be allowed to join the privileged travelling club even if they have enough money to do so: I am not attracted to this proposition but it would perhaps be legitimate if research existed to show that visitors and students of lower socio-economic backgrounds violated immigration

control more than those from the higher echelons. I do not believe that such research has been carried out however. I do not think there is any innate logic in thinking that a poorly educated waiter with no wife and children is more likely to work illegally and overstay his visit visa than a doctor with a good education and a family of six. Both have skills that might be used in the UK, both could apply through legal channels to work here and both would earn more money than they would at home, if they originate from a third world or poorer country. I recommend that consideration be given to this issue. The Government should decide whether it is happy with this basis of refusal. If it potentially wishes to continue to refuse on this basis I recommend that research is done into the issue, and that such refusals are worded in plain English if they continue to be used.

71. In relation to students I have found that ECOs are effectively adding a number of additional requirements under the auspices of the requirements of intending to leave at the end of their studies and being able and intending to follow the course set out in the Immigration Rules. Specifically I find it unacceptable that students should be refused because they have not studied the subject in their own country/ should have studied the subject there more recently; because they could study the subject in their own country more cheaply (a basis of refusal also found unacceptable by Dame Elizabeth Anson<sup>22</sup>); because in the opinion of the ECO they should study in a third country rather than the UK; because they do not “need” to study and because they have failed to obtain a level of proficiency in their own country through studying there. All these reasons proliferate particularly in the refusals of English as a Foreign Language students from Istanbul, Kiev, Moscow and Sofia, and also in the refusal of accountancy (ACCA) students from Accra. It would of course be true of all students from these countries, and indeed many others, that courses would be cheaper at home and could have been taken there by the applicants.
72. I recommend that ECOs should be advised that it is perfectly reasonable for those who do not speak English fluently to study English in the UK even if it is more expensive, even if no previous English studies have been undertaken, even if it is not in a tangible sense needed and even if previous studies in the applicant’s home country have been ineffective. I also recommend that ECOs should be advised that it is not grounds for suspicion that applicants want to attend a college in the UK for other courses such as the ACCA, even if it is correct that colleges in the home country are equally good and cheaper. There is a ‘right to chose’, particularly in the light of the British Council’s campaign to bring foreign students to this country, and also the consideration that, reasonable or

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<sup>22</sup> Independent Monitor’s Report July 2000 page 10 para 2.5

not, the status of a UK qualification may carry the applicant further in their home country.

### **Grounds of Refusal: Forgery**

73. Forgery is a major problem for ECOs. It rightly features in refusals. I have seen many examples of good practice in relation to forged documents. I regard good practice as being the recording of evidence on the file to support any allegation of a document not being genuine. Evidence could be a note of a telephone conversation with an institution such as a bank or a summary of the ECO's reasoning. Where there is no specific evidence that the particular document is a forgery and general matters are relied upon (for instance the colour of the ink or format of a document) this ought to be put to the applicant for comment at an interview. I recommend that this good practice should be followed at all Posts. Alleging forgery is an allegation of serious criminal behaviour: this should not be done without evidence. Unfortunately in 8.5% of the sample I found problematic use of a forgery allegation, in some cases it was not even identified as to which of the documents on file were supposed to be a forgeries. There were other files where the allegation of forgery or non-genuine documents was simply not supported in any way, for instance 'poor quality bank statements' or 'bank statements look very dodgy'. Accra, Lagos and Abuja accounted for more than half of the poor quality forgery refusals I identified.

### **Grounds of Refusal: Insufficient Funds**

74. A decision that the applicant does not have sufficient funds provides a potentially straightforward basis for refusal. As I mentioned in my introduction, it was not possible for me to assess the finances in the majority of cases as it was unclear how much the applicants had available to them in sterling. The issue becomes confused in many cases as although on the face of documents accepted as genuine the applicant had enough money the ECO was, in essence, not prepared to believe that the funds belonged to the applicant. In countries where banks are not traditionally used to hold funds, and indeed where banks have excessive charges and go bankrupt it is not surprising that applicants do not hold all or any of their income and savings in them. Applicants often give reasons for un-typically large sums appearing in bank accounts before applications are made such as: they have just sold a car or been repaid money owed or made a recent profit on a business deal. ECOs find these reasons unsatisfactory and refuse although there is nothing inherent implausible about them: they are simply un-checkable. I question whether such disbelief is consistent with a decision made on the balance of probabilities.

75. I believe that applicants would benefit from a more systematic approach to financial assessment. I recommend that the issue be approached as follows: firstly an assessment is made as to how much money the applicant needs for their trip – I recommend that standard amounts be used for students as recommended by the British Council and for visitors who are not booked on to a pre-paid tour that a minimum amount be set using guides such as “Lonely Planet” and the “Rough Guide” which currently both agree a minimum amount of £30 a day for those who have to purchase accommodation and support themselves. I suggest a minimum of £5 a day for those who will be provided with accommodation & food by friends/ relatives. Secondly I recommend the ECO assess whether such amount exists on the face of the documents presented, or whether they are otherwise satisfied that the applicant has such an amount available to them in any case. It may not always be necessary for documentary proof to be presented. Thirdly the ECO should assess whether there is any reason, on the balance of probabilities, to disbelieve the documents/ information presented by the applicant.

**Grounds of Refusal: Issues of Confidentiality, Race Discrimination, Compassionate Cases and Breaches of the European Convention on Human Rights**

76. I am pleased to report that there were very few applications in which I noted serious concerns such as breach of confidentiality, race discrimination, a failure to deal properly with compassionate cases and a failure to abide by the European Convention of Human Rights. I did however come across one striking case under each of these headings. I set out some details and recommend that ECOs be reminded of the very important rights that occasionally arise in relation to this type of work.

77. In relation to confidentiality I simply remind ECOs of their training and DSP guidance in relation to asylum seekers: it is unnecessary and unacceptable to refer to the fact that someone in the UK is claiming asylum as this breaches a very important principle of confidentiality.

78. The Race Relations Act (RRA) 1976 does apply to the operation of ECOs in granting and refusing visas without the right of appeal, however there is a relevant authorisation under s.19D RRA which permits discrimination on the basis of nationality issued on 12<sup>th</sup> February 2004, which replaces similar authorisations which have been in force since March 2001 – but which also permitted discrimination on the basis of ethnicity up until June 2002. The current authorisation means that ECOs may submit applications for visas from nationals of countries on a list approved by the Minister personally, but not publicly available, to greater scrutiny. I

understand that RRA training is provided to all ECOs and ECMs however there are no notes addressing the topic in the course materials. I believe that it would be instructive for ECOs and ECMs to be provided with examples of the applicability of the RRA to their work as it is conceptually complicated. They operate in a context where the visa system as a whole operates greater restrictions and checks on certain nationalities, ethnic groups, races and on black people generally. In addition nationality discrimination, in relation to certain undisclosed nationalities, is permissible under the RRA authorisations.

79. ECOs in Dhaka generated the following basis of refusal which I noted in files I reviewed: "I know from experience that it is common for prospective emigrants to leave their families in Bangladesh, often for protracted periods, if given the opportunity of working abroad and I do not, therefore, consider that the presence of family here outweighs my doubts about your intention to leave the UK after the period stated by you." I am pleased to report that this formulation was withdrawn by UKvisas after it was brought to their attention. In a number of appeals before the Immigration Appellate Authority it was argued that this amounted to unlawful discrimination on the basis that there was no evidence to support the proposition. I note, however, a refusal using the same wording, but omitting the word Bangladesh, appeared in Algiers: the English teacher to whom it was applied not surprisingly took offence and threatened to write to the press about the humiliating experience of applying for a visit visa at the British Embassy. I am not aware that any research or evidence exists to make this relevant to Algerian visa applicants, or indeed other nationalities. If this is right then the refusal contains an assumption that works in an unlawfully discriminatory fashion.
80. I was also concerned that Tamils might be being subjected to more rigorous examination in the Indian post of Chennai (Madras) from notes I observed on the back of two of the nineteen visa forms I monitored. If this is the case then it would no longer be lawful as Tamils are an ethnic rather than a national group, and such discrimination is not permissible even under the s.19D RRA authorisation. I have referred this matter to the Independent Race Monitor, Ms Mary Coussey, for further consideration as one of the files was dated 7/10/2002, well after the s.19D RRA authorisation was amended to exclude the possibility of lawful ethnic discrimination.
81. ECOs and ECMs all receive Human Rights Act training: indeed the notes in the ECO training pack on this topic run to over 100 pages. It is correctly stated in the documentation that entry clearance work has not changed significantly as a result of the Human Rights Act, however I would

recommend that the training notes should give a list of positive examples of occasions when a visa needs to be granted so that the UK does not breach its international obligations under the European Convention on Human Rights (ECHR).

82. In particular the training pack does not seem to consider the issue of attendance at a trial in the UK, which may be necessary to accord with obligations under Article 6 ECHR, the right to a fair trial, nor does it make plain that Article 2 & Article 3 ECHR rights (right to life and prohibition on torture) are absolute rights which include the right to an effective official investigation of such breaches. Articles 2 & 3 ECHR may therefore be violated when a visa applicant is unable to attend an inquest or the trial in which the applicant is a witness. I reviewed a file in which an applicant, who had suffered serious head injuries whilst in the UK on a previous occasion, was refused a visa to return to the UK to attend the trial of his attacker on charges of causing grievous bodily harm. He was refused a visa despite a letter from the Metropolitan police indicating that if he were not able to attend this might lead to the collapse of the trial. In my opinion the UK's obligations under article 3 ECHR required this man to be admitted to the UK. The refusal of entry clearance meant that this obligation was not complied with. Fortunately UKvisas were able to establish that the attacker was convicted, as he entered a guilty plea at a later date. The Post has since agreed to write an apology to the refused applicant.

83. I was horrified by a refusal from Abuja in which a man was refused a visit visa to come to the UK to see his wife who had just had a stillbirth. The application was supported by a letter from the hospital stating his presence in the UK was needed. The ECO refused a visa on the basis that the applicant was some how responsible for having "let" his wife to travel when seven months pregnant, and drew the conclusion, which was entirely unsupported by any evidence, that the travel had led to the still birth. It is in a case such as this that I would expect compassionate factors should be given due weight. UKvisas have taken this particular matter up with the post and take the position, which I fully endorse, that matters such as this should be referred to themselves if a post has reservations about issuing a visa.

### **A New Formula for Substantive Decision Making**

84. I recommend that the whole basis on which refusals are made is reviewed. There has been a very thorough review of the procedural aspects of non-settlement visa applications which overall has been of positive benefit to the applicants. It is now time that the substantive

decision-making is subjected to a rigorous review. I am conscious that any plan of decision-making would need to fit within the 10 minutes an ECO has for such matters. I suggest a new format for decision making might be as follows:

- The ECO should review the form and documents to see whether it is a straightforward grant. If so a grant is made.
- The ECO should carry out any forgery checks which are indicated by the documentation – comprehensible notes should be made of any checks, and the positive or negative outcomes. If documentation is found to be forged the application should be refused on the basis that they lack credibility without further consideration. Forgery needs to be clamped down upon firmly: it wastes large amounts of time and money for posts and involves the exploitation of applicants by the criminal elements who produce the forgeries. I also recommend that a clear warning to this effect be placed on the visa application forms.
- The ECO should make an evaluation of the money required for the visit/studies and whether this is available on the face of the application. If sufficient funds do not exist the matter should be refused on this basis. If there are sufficient funds apparently available but the ECO believes that the money is not truly available to the applicant then the application should be refused on this basis. Care should be taken that this last matter is considered on the balance of probabilities.
- The ECO should consider whether the applicant intends, on the balance of probabilities, to leave the UK at the end of the visit or studies and whether they will comply with the terms of their grant. I have indicated problems with the current criteria which are used in relation to this issue. I urge however that whatever concerns ECOs have, a very minimum requirement of fairness is that these concerns are explicitly put to the applicants. I suggest that a way to achieve the type of focused interviews that are needed to make a decision within 10 minutes would be for ECOs to formulate their concerns on the basis of the application form and documents, and then to put these to the applicant. At present ECOs collect information through the interviews but do not generally put their concerns to the applicant for comment. My most major criticism of the decisions I have reviewed is that the reasons for refusal are not put to applicant for comment prior to a decision being made. I found this was not done in more than half of cases – although it is something ECOs are instructed to do by DSP 8.15. I recommend that this is done because it will provide a framework for focused interviews: in the majority of

interviews I would expect simply the refusal issues to be put and replies recorded and considered. In addition to making interviews quicker, this approach would make the process more transparent and fair. Applicants would understand the ECOs concerns and get the opportunity to have their say before any refusal is made, whereas at present they can only comment after the event of the refusal.

- I recommend that research is commissioned into the issues that are pertinent to applicants overstaying or breaching conditions so that questioning can focus on relevant issues. At present there is no data on who returns, particularly as departure controls do not exist. I understand that new technology may enable them to be re-instituted and provide useful information. I do not think that ad hoc reporting back to post requirements, operating for instance in Accra where some 'high risk' visa applicants are granted visas but asked to report back to the post on return to Ghana, are useful in providing information. Some applicants will forget or not bother to report back and the data will be incomplete.

### **Quality Control of Decision Making**

85. In 1993, when rights of appeal were removed from the set of applicants I monitor, Earl Ferrers, speaking for the government in the House of Lords, stated that there would be a number of quality control mechanisms to ensure that decisions were of appropriate standards. These mechanisms were as follows: the provision of information to applicants; a more detailed notice of appeal; that a refusal will not prejudice a future application; that complaints made to what is now UKvisas would lead to a review if possible by a more senior officer, and further information would be considered by a different ECO; and that there would be a daily review of all such refusals by an ECM<sup>23</sup>. I believe I have dealt with issues of the reasons for refusal and refusals not prejudicing future applications above. I will now turn to the other quality controls promised.

### **Quality Control via the Provision of Advice**

86. I believe that the provision of advice to applicants is a crucial part of better decisions. If the applications are better prepared the decisions will be more appropriate, and applicant who are unable to demonstrate

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<sup>23</sup> HL Debs 16 February 1993, vol 542, no 96, cols 1041-2

compliance with the rules will be less likely to apply. There are leaflets provided by UKvisas giving information for students and visitors, and sponsors. These were last up-dated in September 2003. I am informed that UKvisas sends out in the region of 800,000 leaflets a year. I did discover leaflets from March 2002 in circulation, which are two years out of date and thus have basic matters, such as the visa national list and the form numbers, wrongly stated. It is important that posts are instructed to withdraw and destroy old leaflets. UKvisas has a useful website which provides up to date information, and many posts have developed websites which link to that of UKvisas. Internet information is obviously an excellent resource but it is not universally accessible and I recommend that the leaflets be kept regularly up-dated and made freely available at posts. Posts also provide additional advice about making applications by telephone and in the form of their own written information given to applicants.

87. I have noted that different posts request that applicants provide different documentation. The ECO training materials correctly note that no documents are required for visitors and only an acceptance letter for the course for students. In reality documents are produced by applicants and routinely expected by ECOs. Differences in the expected documentation may be justified on occasions as certain documentation may be of lesser value in some countries than others. If tax declarations are routinely an understatement of income in a certain country then there is little point in requesting them, for instance.
88. I believe that UKvisas ought to consider the issue of documentation carefully, however, and attempt to enforce consistency across the system, except where difference is justified. I visited visa posts in Harare and Nairobi. The ECM in Harare held the view that it was wrong to require any particular financial documents as this might lead to them being pointlessly created, either lawfully or unlawfully, and to an expectation that possession of such documents would lead to grant of a visa. The post in Nairobi, however, issues a list of documents required for visitors including six months of bank statements for the applicant and person funding the visit. I do not believe that local circumstances justify the different demands. I am inclined to the position taken by the ECM in Harare, which is in line with guidance in the Best Practice Guide to Entry Clearance Work. I also noted that the Nairobi check list requires evidence of the immigration status of any UK sponsor whereas the UKvisas leaflet does not list this as needed, neither does the UKvisas internet guidance to visitors and neither does the VAF 1 2003 form. I think that a universal position should be taken on such an issue. Dame Elizabeth Anson raised

the issue of inconsistent and unreasonable positions taken on documentation<sup>24</sup> and I recommend that this is now looked at by UKvisas.

89. Outsourcing means that fewer applicants will actually visit posts and have face-to-face advice on their applications. In this context telephone advice given by posts is undoubtedly valuable, and was in constant demand in the three posts (Dusseldorf, Harare & Nairobi) that I visited. Immigration practitioners have expressed concerns that outsourcing agencies are giving immigration advice, and I am aware that UKvisas does not regard this as appropriate either. This is a matter that posts will have to monitor carefully to ensure that the 'pre-sift' of applications is not re-introduced in this inappropriate fashion, and that wrong advice is not given. The British Council provide valuable information to foreign students through a variety of media: one-to-one counselling, booklets and a website. They have suggested that it should be possible to download a copy of their guide to entry clearance for international students from the UKvisas website with the VAF 1 form, and this seems an excellent suggestion which I recommend be followed up.

90. I also commend the Immigration Advisory Service (IAS)<sup>25</sup> project set up in Sylet, Bangladesh, in July 2000 to provide advice to visa applicants. From the Annual Review of this IAS office for 2003 it can be seen that 40% of the work in the Sylet office deals with advising students and visitors about the law. Advice on a full range of immigration issues was provided to 2833 clients for a small registration fee of approximately £10 (1000 taka). IAS are considering expand their advice service to Pakistan, India, Sri Lanka, Nigeria, Ghana, Afghanistan and Iraq. The applicants who are refused without a right of appeal have almost no UK nexus and I can confirm that virtually none of them were represented by UK solicitors or regulated OISC advisers, and only a very few involved UK based community groups or MPs in their cases. In such circumstances accurate legal advice abroad is vital, and will relieve pressure on visa posts by ensuring that better quality applications are presented. I recommend that IAS be given all possible support in developing these projects abroad.

### **Quality Control through the ECM Review**

91. The Diplomatic Service Procedures (DSPs) require ECMs to subject all refusals without the right of an appeal to a review within 24 hours. In 4.6% of cases that I reviewed there was either no evidence of a review or if

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<sup>24</sup> Independent Monitor's Report July 2000 page 14 para 3.4

<sup>25</sup> The Immigration Advisory Service is an independent publicly funded organisation that provides free advice and representation to persons with rights of appeal against refusal of immigration applications.

there was it was undated. I did not monitor the incidence of 'late' reviews. In response to the Government in the debate on the 1993 Act Lord Ackner expressed the opinion that such a review could only amount of 'rubber stamping'<sup>26</sup> as it would be impossible for an office manager to review a decision by a junior official based largely on credibility after the applicant had gone home. Naturally my review of the files does not tell me how often such a review results in a change of decision as such a matter would no longer be refusal, and thus would no longer be part of my sample. The ECM in Nairobi was able to inform me however that she spent approximately one hour a day looking at refusals without the right of appeal, and that she had overturned 10 out of 359 (2.8%) in the previous month. The Best Practice Guide to Entry Clearance Work emphasises that the review is mainly to ensure decisions are 'legible, clear and cogently worded' and states that: "The ECM may in **exceptional** circumstances overturn the decision of the ECO if he/she is of the view, having reviewed the application, that the requirements of the Immigration Rules have/have not in fact been met." My observation of the process was that it would act as a check on very poor refusals, and was thus worthwhile, but had severe limitations. This was similar to the position of the parliamentary Constitutional Affairs Committee, who recommended that UKvisas reconsider the role of this review<sup>27</sup>.

### Quality Control through Complaints Mechanisms

92. Another key aspect of quality control offered by the Government that withdrew the right of appeal was, in essence, a good response to complaints made. I am aware that I have not seen a representative sample of complaint responses as I have only seen the files in which complaints led to a negative response, and not those which changed the decision. I was concerned that in 23 of the files reviewed the complaint was not responded to at all, or only responded to in a totally inadequate way, and note that the majority of these were in Accra or Lagos. Other files included responses to complaints which were essentially in standard form and did not reply to the points made by the interested complaining party, even when these were palpably valid. As one articulate Ghanaian post-graduate economics students wrote: "I am not in any way seeking a

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<sup>26</sup> HL Debs 16 February 1993, vol 542, no 96, col 1045

<sup>27</sup> Constitutional Affairs Committee Second Report 200304 HC 211-1 26/2/2004: "The committee heard in evidence that the numbers of decisions overturned by ECMs is very low. **In India we learnt that the ECM review was often regarded as a "rubber stamp". This process could, however, deal with some cases effectively without delay or expensive appeals. We recommend that UKvisas give further consideration to developing its use.**"

reversal of the Consul's decision as that can never happen." He complained that he had not received a proper interview in relation to his application, and thus had no opportunity to refute inaccurate allegations made in the refusal: on the face of the file this was totally accurate, there were no interview notes simply a 12 word note partly in shorthand. His letter is balanced, and even praises some staff. The only 'response' was for "No action required" to be scribbled on his letter. Clearly he ought to have received a response.

93. From the evidence I have seen, which as I have explained is not complete, I believe that posts are currently unable to invest sufficient time in complaints from sponsors and applicants and as such they do not act as a proper quality control mechanism. Dame Elizabeth Anson also expressed concerns about 'pro forma' complaint replies which failed to address the specific complaint and were 'dismissive to the point of rudeness'.<sup>28</sup> I believe that complaints and representations by Members of Parliament are, on the other hand, very effective. From my familiarisation visits I have seen excellent, detailed replies to MPs, however, as mentioned above, MPs complaints are very rarely made in relation to the group of applicants I monitor.

### **Quality Control using Adjudicator Determinations**

94. I think that it is clear that quality control in relation to this area of refusal is hard to achieve. I believe however that it could be improved if Adjudicator determinations, particularly in 'related' types of appeals for family visitors and longer term students, were used as an aid to assessment of decision-making errors, and the overall quality of decisions by the post. I was particularly struck by the statistics for success in "paper" family visit appeals – it is to be noted that 38% of these are successful<sup>29</sup>. These appeals represent simply a judicial reconsideration of the same papers which were before the ECO. It is alarming that in the more than one third of cases the decisions are found to be wrong. I accept that some Adjudicator determinations will not adequately articulate the reasons for reversing the decision but many will. I recommend that ECMs read all determinations to deduce patterns of error in refusal reasoning, and to improve the quality of decision-making in refusals which do not have the right of appeal as well as those which benefit from such a right.

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<sup>28</sup> Independent Monitor's Report July 2000 page 31 paras 5.30 and 5.31

<sup>29</sup> Family visitor appeals: an evaluation of the decision to appeal and disparities in success rates by appeal type by Verity Gelsthorpe, Robert Thomas, Daniel Howard & Heaven Crawley – Home Office Online Report 26/03 p.12 –13. It is to be noted that oral appeals had a much higher success rate of 73% but frequently they add further information not available to the ECO through the appearance of the sponsor and legal representation.

95. I also recommend that the Immigration Appellate Authority keep statistics on appeals allowed and dismissed by Post. I understand that UKvisas is intending to collect such statistics on family visit appeals from the ten largest family visitor refusing Posts<sup>30</sup>. At present data is only collated by nationality which does not precisely equate to decision-making by post, however following discussions with the Immigration Advisory Service (IAS) they advised me that in appeals dealt with by their Central London Office in relation to family visitors and students they believed that the overwhelming majority were applying and being refused in the country of their nationality. IAS thus supplied me with data that should provide pointers to the quality of decision by country if not by visa Post.
96. IAS has supplied me with data for family visit and student appeals for two financial years, namely 2002 –2003 and 2003 – 2004. This gives an overall success rate on appeal for IAS represented students of 38% in 2002/03 & 49% in 2003/04, and family visitors of 79% in 2002/03 & 83% in 2003/04. I examined success by nationality in this IAS sample. I excluded nationalities with less than 5 appeals in a year as unlikely to be statistically relevant. In relation to family visit appeals brought on behalf of Bangladeshi, Ghanaian and Indian appellants the success rate was over 90% in 2002/03. In 2003/04 there were six nationalities with more than five appeals with family visit success rates as follows: Ghanaians 71%, Indians 79%, Bangladeshis 82%, Nigerians 83%, Algerians 88% and Filipinos 90%. In relation to student appeals in 2002/03 there was a very wide range of success rate. In relation to Zimbabweans and Poles it was only 9%, where as Filipinos won in 71% and Sri Lankans in 66% of cases. In addition Nigerians, Kenyans and Nepalese all had success rates on student appeals above the IAS average. In 2003/04 the range of success rate for students went from 32% for Indians up to 88% for Nepalese. Chinese, Pakistanis and Sri Lankan students all had success rates above the IAS average in this year.
97. Differences in refusal rates in different posts may be justified by the quality of applications, but there should not be drastic differences in the percentages of appeals allowed and dismissed. A post which had a high percentage of appeals allowed ought to be subject to investigation by UKvisas as I believe this would be an indication of poor decision-making. In the light of the IAS data I strongly recommend that the Immigration Appellate Authority collect data by post, and that this be passed to UKvisas. When a statistically relevant sample is available investigations should commence into the quality of decision-making at posts which lose a high percentage of appeals. I believe that an appropriate initial marker for investigation would be where a post has more than 24% of its

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<sup>30</sup> Entry Clearance User Panel Minutes of 23<sup>rd</sup> October 2003

decisions successfully appealed<sup>31</sup>. If the IAS data is replicated there is significant cause for concern in relation to the quality of decision-making in visit and student cases. It is also to be noted that three posts with very high rates of refusal in non-settlement cases overall, namely Accra, Kathmandu and Dhaka were also ones where their nationals had IAS success rates on appeal above the norm and well over 50%. This is suggestive of poor decision making at these posts leading to high rates of refusal.

### **Quality Control: the Customer Satisfaction Survey**

98. In 2000 UKvisas carried out a customer satisfaction survey amongst all posts and collated the response<sup>32</sup>. The questionnaire canvassed the views of visa applicants for all types of visas on the quality of leaflets, waiting room, staff politeness and how comprehensible were the advice and notices they received. The survey also asked for information as to whether the visa was granted or not, and gave a box for comments. The results of the survey were very positive with over 90% of applicants being satisfied on all counts. Unfortunately there was a low response rate and a feeling amongst almost half the posts that it may not have been worthwhile. Some positive changes did result however: better signs, drinking water machines installed, changes in waiting areas and queuing systems changed. I recommend that another survey is carried out, as the Best Practice Guide to Entry Clearance Work indicated would happen, with greater efforts made to obtain a higher response rate and information from all posts. This is potentially a most valuable way of assessing the service provided to applicants, with and without the right of appeal, from an applicant angle.

### **Familiarisation Trips to Dusseldorf, Harare and Nairobi**

99. I would firstly like to thank the Heads of Mission and staff at the posts I visited for their hospitality and efforts to ensure that I saw the entry clearance operation in its entirety. I was impressed at all three posts by the hard work of ECOs and ECMs, and the team spirit amongst staff. Staff are dealing with rising numbers of applicants, new technology and threats to their own personal safety with remarkable resilience.

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<sup>31</sup> This is the average success rate on appeal in all Immigration Adjudicator matters over the period 2000 to 2002 - figures from the Control of Immigration Statistics Cm 6053. It may be that this is over-generous to decision makers as the parliamentary Home Affairs Select Committee reports in December 2003 & January 2004 both found a 22% success rate on appeal in relation to immigration & asylum matters indicative of poor decision making.

<sup>32</sup> Best Practice Guide to Entry Clearance Work January 2003 para 3.17

100. Previous Monitors have usually visited four posts: due to the short time frame for this report I have only been to three, and as a result I hope to visit five posts for my next report. I chose Dusseldorf as it is the largest post dealing with third country nationals in Europe; Harare because Zimbabwean nationals were made visa nationals in October 2002 and I wanted to see the operation of a post new to dealing with visitor and student applications and Nairobi because of concerns with the operation of this post voiced to me by Members of Parliament and lawyers working in this field, which were also reflected in the 2000 report of Dame Elizabeth Anson<sup>33</sup>.

101. My visits to posts were all instructive in showing me the practical pressures and constraints under which ECOs work. The daily queue of in-person applicants filled the waiting spaces in all three posts despite the fact that January and February (when I visited) were not busy months. Although time is designated for ECOs to do paper work (explanatory statement preparation and deal with matters needing referral to the Home Office) dealing with the daily queue and deadlines on courier applications clearly has the first priority. ECOs in the posts I visited were processing visa applications on the counter from around 30 applicants a day, rising to as many as 50 at the busiest times<sup>34</sup>. At 10 minutes per applicant this is 5 hours of intense work, which was done with minimal breaks. In both Harare and Nairobi there were also issues with malfunctioning photocopiers which generally hampered work.

102. The interviewing of applicants at the counter or in interview booths takes place through bullet proof glass, and the intercoms were either ineffective, did not work at all or were not used. It was hard for staff and applicants to hear each other without raising their voices, particularly in Harare where applicants also had to contend with the television in the waiting space behind them. ECOs told me that the situation was common to the majority of posts. I met many ECOs who had worked at posts other than their current one, and some who were floaters working for a period of weeks or months in a particular post before being sent to another post in need of additional staff. My predecessor also noted audibility problem in Lagos. In addition the interviewing cubicles I saw were all extremely small, and hot even in Dusseldorf in January. I recommend that further consideration be given to identifying an intercom system that might prove reliable and easy to use, to avoid staff and applicants having to constantly raise their voices.

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<sup>33</sup> Report of Independent Monitor 2000 page 25 para 5.5

<sup>34</sup> This estimate would seem to accord with the Best Practice Guide to Entry Clearance Work January 2003 staffing formula at para 5.3.1 by which each ECO is expected to deal with between 6500 and 15000 applications a year

103. ECOs all now have to type their refusals whilst the applicants wait, and in due course they will also have to type their interview notes. This was already happening in Nairobi. I observed that many ECOs could not touch type, and that this considerably slowed them down. UKvisas have mentioned to me that they are considering voice recognition software. It is my understanding that this would be expensive and would be unlikely to work in such a noisy environment. I recommend that ECOs are provided with compulsory touch-typing training to provide them with the necessary keyboard skills to keep up with increasing numbers of applicants. I also believe that this would encourage them to personalise standard refusal grounds appropriately. This should become part of ECO initial training, and could be provided at little expense to those already in post via computer disks.
104. ECOs work with very minimal reference resources. This is a concern particularly as their only training for the work is a three week course prior to being sent to post, and in the context of their having no legal background. ECMs also have no formal legal training, and receive a one week training course on all aspects of their work. ECOs and ECMs have no text books on immigration law available to them: I observed this on my visits and it is confirmed by the Best Practice Guide to Entry Clearance Work which notably does not list legal reference books as requirements under their 'equipment and documents' guidance for setting up a visa section. I recommend that all Posts provide a copy of the JCWI (Joint Council for the Welfare of Immigrants) Immigration, Nationality and Refugee Law Handbook to each ECO and to all telephone advice staff. This is a publication that I believe would be appropriate as it is cheap, comprehensive and designed for use by immigration advisers without a legal training. There should also be a copy of a comprehensive immigration legal textbook, such as McDonald's Immigration Law & Practice by Ian A McDonald QC and Francis Webber published by Butterworths, per visa issuing Post.
105. I was concerned that changes in law and practice were dealt with by telegrams (ACEIPS). I recommend that priority is given to the comprehensive instructions to ECOs, (the DSPs) being fully up-dated. These are currently out of date, which is a serious matter given their status as the only indexed guidance available to ECOs. For instance the domestic workers concession is still referred to at chapter 18 of the DSPs when this was replaced by a paragraph of the Immigration Rules with different requirements on 18<sup>th</sup> September 2002, and chapter 8 refers to the IM2 form being the correct one for non-settlement matters when this was replaced by the VAF 1 form in 2003. I understand that UKvisas is intending to introduce a continuous process of updates rather

than periodic ones<sup>35</sup>, however I recommend that the DSPs be amended simultaneously with the sending out of telegrams. ACEIPs are stored in date order and thus provided only a hard to access source of guidance to experienced ECOs and none at all to those who were not in post to remember their arrival. In some posts ACEIPs are pasted into a paper copy of the DSPs but this is unsatisfactory as the paper version of the DSPs will rapidly become out of date unless great care is taken to replace sections when they are revised.

106. There were problems for posts over contacting the Home Office and UKvisas for assistance. ECOs are used to working to strict deadlines, such as processing in-person applicants for visit visas the same day, drop box applications within three days, and courier applications within ten days. There was a feeling of frustration that both UKvisas and the Home Office failed to respond in anything like these time limits. There was also a feeling that as 'gate-keepers' they were not always being provided with the back up they required on difficult issues to do with less common visa applications, although UKvisas does run an ECO support line which endeavours to provide responses to questions within 24 hours. At the time of my visits to Harare and Nairobi a new email system had been instigated with the Home Office which was proving much better than previous systems. It not only provided information requested but when this was not immediately available provided information on time scales as to when information would be provided. I will monitor to see if this email system continues to be effective on subsequent familiarisation visits. Failure to respond to very regular, documented requests for SEF pages had caused some refugee family reunion applications to be outstanding for a year in Harare: I refer to annex A of this report where I deal with refugee family reunion issues in more detail, but point to a weakness in the system of 'joined up' working between the Immigration & Nationality Department and visa Posts. This weakness has significance for all types of applications.

107. My visit to Nairobi pointed out a weakness in relation to the visa system's vulnerability to changes in numbers of applicants. In the Summer of 2003 there had been a much larger than expected number of applicants for student visas: there was a 25% increase in applications over the previous year. The visa section had been totally unable to deal with the number of applicants, applicants had had to resort to queuing over-night, and there had been negative publicity for the post. Staff were taken by surprise by the numbers, and were still uncertain as to why the number of applicants had increased beyond expectation in this way. A comprehensive and sensible plan of action had been formulated by the

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<sup>35</sup> Entry Clearance User Group Minutes 23<sup>rd</sup> October 2003

ECM to try to prevent a repeat of the chaos of the previous year however the issue of poor information being available to Posts about likely influxes is made clear by this experience. Without careful research and understanding of the numbers of applicants posts are unable to plan properly. I am certain that UKvisas views supporting posts in this way as a priority and recommend that they ensure an exchange of information and statistical data (in particular post by post refusal rates for students) with the British Council, which is of course working to targets to increase student numbers and also has the ability to influence the quality and timing of applications.

108. My visit to Nairobi also drew attention to a number of weaknesses in relation to refugee family reunion visa processing. I am aware that refugee family reunion is not the main focus of my work so I have put my more detailed recommendations in annex A to this report. However the history of systemic failure by the British High Commission in Nairobi in relation to reuniting, mainly Somali, refugees with their family members demonstrates a number of weaknesses in the current visa system and has implications for those that I do monitor. I believe that the issues which arise may be summarised as follows.
109. Firstly the system in visa Posts prioritises the non-settlement matters that make up 90% of their work: this is in the interests of the applications I monitor and is in the financial interests of the UK, as students and visitors are a significant source of income. I make recommendations that require time and resources to be given to refugee family applicants who pay no or reduced fees and whose applications can become time consuming, particularly if other departments, especially the Immigration & Nationality Department (IND), do not respond promptly. I believe that it is incumbent on Government to ensure that these recommendations do not impact negatively on non-settlement applicants. I am aware that although UKvisas is self-financing that certain projects, such as the finger printing of all applicants, are acknowledged as being the responsibility of other departments. In short I believe it would be more appropriate for the additional costs of family reunion for those with full or subsidiary refugee status, required so that the UK meets its obligations in international law, are met by IND rather than by applicants for student and visit visas.
110. Whilst visiting Posts I was able to observe a tension between refugee family reunion work and the work which ECOs spend most of their time dealing with, namely processing visit visas. If someone applies for refugee status having travelled to the UK on a visit visa then this matter comes immediately to the attention of the post as the visa application

form is requested by the Home Office. For ECOs this is seen as a failure in their role as gate-keepers: they must inevitably feel let down that the applicant has lied to them, particularly as they will not be informed of the evidence of human rights violations which drove the applicant to deceive them. It is then hard to expect the same ECOs to deal enthusiastically with reunited the family members of refugees with those recognised as such in the UK. ECOs will have to deal with prejudices in the country in which they live against asylum seekers and refugees, who will be seen as pariahs in many ways, as well as their vilification in the British press. Although I am certain that ECOs act professionally, I also believe that it is unfair to expect them to deal with this work without support and special training.

111. It is clear to me that the resolution of the failings in relation to refugee family reunion in Nairobi has been largely due to the introduction into the post of an efficient and pro-active ECM, who has in turn been provided with appropriate backing and resources by UKvisas. ECMs are the key to the lawful and efficient operation of Posts in relation to all aspects of visa work. UKvisas has no power to order the issuing or rescinding of visas, and will remain ignorant of problems unless these are correctly reported back by ECMs. I have some concerns at the amount of power and independence that resides with Posts, and the lack of control which can be exerted by UKvisas. I recommend that the training and monitoring of ECMs be a priority for UKvisas, and that ECMs be brought together on a more frequently to formulate uniform practice and understanding of the law. I understand that ECMs do meet on an approximately six monthly basis. These meetings should provide a forum for further legal training and harmonisation of practice.

### **Acknowledgements**

112. I would like to thank the Heads of Mission and their staff in Dusseldorf, Harare and Nairobi for their time and hospitality. I would also like to thank the staff of UKvisas, particularly Robin Barnett who heads the Directorate, Lorraine Fussey Head of Policy Section and Rifhat Shahzad who has provided me with administrative support. I am also particularly indebted to Kit Eaves for teaching me to use my Access database, and my father Ian Lindsley for his support with my interminable computer problems. I thank everyone else who spoke to me about their experiences of the visa system, these contributions have greatly enriched this report.

Fiona Lindsley

30/4/2004

**Annexes**

- Annex A: refugee family reunion
- Annex B: statistics for the visa system for 2002 – 2003
- Annex C: paragraphs 40 to 57 of the Immigration Rules HC 395 (as amended)
- Annex D: summary of recommendations

## **Annex A: Refugee Family Reunion & the British High Commission in Nairobi**

I believe that it is important to document the history of failure in relation to refugee family reunion by the British High Commission in Kenya as it represents a significant failure to honour international human rights obligations by the UK government in relation particularly to extremely vulnerable Somali refugee families. I have set out brief summaries of the situation for refugees in Kenya and the UK's international law obligations and domestic enactments to put the decade of under performance by the British High Commission into context. I recognise that much good work has recently been done to try to right the previous wrongs but argue that more must be done to bring practice to an acceptable level of service. I draw attention to the fact that failures of posts in relation to persons with weak UK nexus do not come quickly or easily to the attention of the UK based management of the visa system and may too easily be ignored. It is imperative that greater guidance, supervision and control is exercised by UKvisas, particularly in relation to applications engaging fundamental human rights. I also point to the proliferation of legal cases concerning Somali family reunion: I hope that a more efficient and equitable system might lead to a lesser cost to the public as well as a reduction in human suffering to those who have been recognised as genuine refugees and their families.

### **1. The Situation of Refugees in Kenya**

Since 1991 the Kenyan government has de facto suspended its operation of the 1951 Geneva Convention relating to the Status of Refugees (the Refugee Convention). This means that since this time it has not been possible for asylum seekers in Kenya to be recognised as refugees by the Kenyan authorities, either in international law or under any domestic legislation. The only protection for refugees has been provided by United Nations High Commissioner for Refugees (UNHCR).

The government of Kenya has imposed a policy of encampment since the early 1990s when large numbers of refugees arrived from Somalia and Sudan. By the end of 1992 there were around half a million Somali refugees living in thirteen Kenyan refugee camps. UNHCR estimate that approximately 218,500 refugees were living in Kenya in 2001, of which in fact 60,000 were living in Nairobi without documentation or protection of any type.

The Refugee Policy Director of Human Rights Watch stated on 6<sup>th</sup> December 2002 that: "Refugees in Kenya are often at risk because of potential violence from criminal elements. It turns out they are also under threat from the Kenyan police who should be protecting refugees not abusing them." There have been repeated rounds of arrests and human rights violations against refugees by the Kenyan police, most notably in September 1998, October 2001, February 2001, May 2002 and December 2002. In addition in 1999 it came to light that a criminal ring had infiltrated UNHCR and corrupted its work on status determination and resettlement: refugees could not access services without paying bribes. Human Rights Watch found UNHCR's operations were still being hampered by the scandal in 2002. Refugees in Kenya are unsafe in that country from security agents from their countries of origin as well as from the Kenyan police and elements of the Kenyan population. Human Rights Watch summarised the situation for refugees in 2002 in Kenya as "dire and dangerous"

For Somali refugees there is the double problem of being both Somali and refugees. Ethnic Somalis within the borders of Kenya have been seen as 'shifita' or bandits since independence in 1963 when they provided support for a secession movement that wanted to unify Somalis living in divided colonial territories. Institutionalised Kenyan suspicion against ethnic Somalis is added to prejudice and abuse of refugee Somalis on account of their lack of status.

Currently Somali and other refugees have to live in refugee camps in Kakuma and Dadaab, and if they move outside these camps may be arrested and charged with unlawful presence in Kenya under the Kenyan Immigration Act, for which they may be imprisoned and expelled from Kenya, without regard for any risk of persecution on return in their country of origin. Human Rights Watch comment in their December 2002 report that the majority of those expelled were Somali refugees sent to back to Somalia. The camps in Kakuma and Dadaab are in desert regions with little vegetation & water, extreme heat and scorpion infestation. Refugees are totally reliant on relief aid to survive. A BBC Monitoring International Report of 23<sup>rd</sup> February 2002 stated that: "almost 220,000 refugees in Kakuma and Dadaab refugee camps in Kenya face malnutrition and a wider humanitarian crisis unless urgent contributions are received". Security agents from Ethiopia and Sudan operate in the camps, and the clan based persecution of Somalia has been documented as continuing in both of the camps.

UNHCR stated in a letter to South Manchester Law Centre dated 15<sup>th</sup> January 2004 that: "UNHCR is concerned that Kenya as a host country lacks the capability and instrumentality to protect its refugee population from human rights abuses by other groups living within its territory. Indeed the

lack of any specific legislation dealing with refugees leaves the entire refugee population in need for international protection”.

## **2. Refugee Family Reunion Obligations Deriving from the 1951 Geneva Convention Relating to the Status of Refugees**

The obligation on states to facilitate family reunion for recognised refugees comes from a series of conclusions of the Executive Committee of the High Commissioner’s Programme (EXCOM). The Final Conference of Plenipotentiaries on the 1951 Convention described family unity as “an essential right of the refugee”.

UNHCR takes the position that the principle of family unity ought to apply to all persons who are emotionally and economically dependent on each other either because they were part of a family unit prior to flight or because they have become dependent due to the impact of persecution, civil conflict or refugee flight. EXCOM specifically noted that documentation of relationships is often lost in a refugee’s flight from persecution; that the quest to establish relationships should not become burdensome and should be conducted on the basis of a “fair interview to examine the claims by trained and competent personnel.”<sup>36</sup> UNHCR urge a protection-based policy of family unity with procedures which should be “expeditious”<sup>37</sup> UNHCR point out that: “Family reunification thus is a benefit of incomparable value to the individual members and the family as a unit. At the same time, protecting the family unit through reunification also is a benefit to States, as the integration prospects and the well-being of individual refugees is enhanced, thus enhancing the adjustment of refugees to their new homeland and lowering social costs in the long term.”<sup>38</sup>

## **3. Refugee Family Reunion Rights in English Law**

On 18<sup>th</sup> January 1995 an express policy of accepting the spouses and minor children of recognised refugees without any requirement of maintenance or accommodation was announced in Parliament<sup>39</sup>. This policy was inserted into the Immigration Rules on 2<sup>nd</sup> October 2000<sup>40</sup>. The requirements under the rules are currently as follows:

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<sup>36</sup> Family Reunification in the Context of Resettlement and Integration UNHCR Geneva 20-21 June 2001

<sup>37</sup> Ibid

<sup>38</sup> Ibid

<sup>39</sup> Hansard HC, Vol 252, col 528

<sup>40</sup> HC 395 paragraph 352A – 352F inserted by Cm 4851

- The applicant is the spouse or minor child of a recognised refugee
- That the child or spouse was part of the family unit before they left the country of former habitual residence of the refugee to seek asylum
- That any child has not married or formed an independent family unit & that the spouse intends to live together permanently with the refugee and the marriage is subsisting
- That neither the child nor spouse would be excluded from protection under article 1F of the Refugee Convention had they applied for asylum in their own right

In relation to the family reunion of Somali refugees recognised in the UK rules requiring cohabitation with the family member in the country of former habitual residence creates potential problems due to a pattern of interim residence, particularly in Kenya and Ethiopia, prior to recognition as refugees in the UK. This has and will continue to cause difficulty for refugees of other national origins seeking reunion with their families.

In legal terms habitual residence means simply “residence in a place with some degree of continuity and apart from accidental or temporary absences”<sup>41</sup> In a reported decision of the Immigration Appeal Tribunal of 20<sup>th</sup> January 2004<sup>42</sup> the Tribunal decided that the Immigration Rules anomalously excluded those who had a child or married whilst temporarily or precariously resident in an intervening country. Although it was clear that the Tribunal felt some ill ease about the situation they accepted Counsel’s submission that this was not a reason to exclude those such as the Somali refugee appellant in that particular case who had indeed been habitually resident in an intervening country (in this case Ethiopia) prior to claiming asylum in the UK. The Tribunal was clear that the rules do not mean that only family who cohabited in the country of origin/ nationality qualify for family reunion under the rules. It is also implicit that a refugee may have more than one country of former habitual residence.

#### **4. Family Reunion Practice at the British High Commission in Nairobi**

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<sup>41</sup> *Nessa v Chief Adjudication Officer* [1998] No 2 All ER 728 HL

<sup>42</sup> *Abdirashid Sheikh Abdinisir Sheikh Adam v ECO Pretoria Appeal* No TH/04403/2003

I am indebted to the openness of UKvisas and the current ECM in Nairobi with regard to the history of neglect of the issue of family reunion cases by the visa section. The situation became apparent to the current ECM shortly after her arrival in post in May 2003 because she was receiving in the region of 80 letters a month from Members of Parliament about family reunion cases, the overwhelming majority of which pertained to Somali nationals. I pay tribute to those MPs who have written persistently and presumably with little result over the years on behalf of family reunion cases and emphasise the very important role these letters had in alerting the ECM to the issue.

The MPs letters alerted the ECM to investigate the situation: it transpired that there were many files which had not been logged on the proviso computer system or which had been inadequately entered, and chronic delays existed in dealing with cases. There were in the region of 5000 files but due to the poor management it was not possible to establish whether they related to matters that were truly current, or to immediately establish what the situation was with the files. Files were found relating back to applications for family reunion made in 1991.

At this point in time family reunion was the collective responsibility of the team of ECOs with the help of a part time locally engaged assistant. The ECM put in a request for appropriate resources to UKvisas to start to sort and resolve the very large number of potential files. In October 2003 work was started with a new team dedicated to family reunion: by February 2004 there were two ECOs working full time in the project, with a full time interpreter and four locally-engaged support staff. I am able to report that an Excel data base of all family reunion matters has now been established which in February 2004 featured 1750 matters, with applications going back to 1996. A large number of the files have been closed as dead matters, and it was hoped that all files would have been assessed very shortly. I was confident that the family reunion team had addressed the administrative chaos and that files were being run in a systematic and orderly fashion. In addition UKvisas had also supplied funds for extra DNA testing so that some 250 DNA tests could be put in motion by March 2004: I was assured if these DNA tests confirmed relationships they would lead to the resolution of cases via the issuing of visas.

In November 2001 the British High Commission in Nairobi decided that it was a risk to security to admit undocumented applicants for visas, or indeed any Somali applicants with documentation issued after 1991 when the Somali government collapsed. No one has been able to explain to me the logic of this position as I am not aware of any terrorist attack being perpetrated by persons without identity documents but I accept that security issues may make it impossible to provide a cogent public explanation. The

inability to admit Somali applicants became a significant additional factor in the institutional inertia in relation to family reunion applications. I am pleased to report as of February 2004 it was possible not only to interview pending applicants without identity documents but also to accept new family reunion applications from those without documentation.

## **5. Recommendations**

I wish to emphasise that I fully endorse the work that has been done by the current team in Nairobi but I am left with the following concerns:

- That the team dealing with family reunion are administratively skilled but do not have specialist training in refugee issues, as is advocated by UNHCR. I think this is particularly important given the very different nature of the work in this area to other visa section processing; the very minimal element in the ECO initial training, the general prejudice in the British press against asylum seekers compounded in Kenya with strong hostile societal attitudes to refugees and ethnic Somalis. I have been provided with information by legal representatives which demonstrates a lack of basic knowledge about the names of refugee camps and issues with UNCHR support and documentation. I would recommend that the family reunion team are all provided with training by UNHCR into the background of the refugees they are dealing with and the international obligations relating to refugees. I also recommend that the team be required to read relevant background literature such as the Human Rights Watch report "Hidden in Plain View: Refugees Living Without Protection in Nairobi and Kampala", and that systems are put in place to keep them up-dated. I also recommend that relevant training and literature be provided to all other visa sections dealing with refugee family reunion.
- I was concerned that the Human Rights training ECOs and ECMs received indicated that the European Convention on Human Rights (ECHR) & the Human Rights Act did not require decisions within a reasonable period of time<sup>43</sup>: any application concerning family life must be dealt with without discrimination and in addition applicants are entitled to effective remedy under article 13 of the ECHR in relation to any violation of their rights. If the application and appeals process is unreasonably slow then applicants will be legitimate in approaching the High Court seeking a remedy to enforce their rights both in international human rights law and under domestic administrative law principles. I am also concerned that

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<sup>43</sup> See notes on article 6 ECHR which indicate that this does not provide protection against long tier 3 & 4 interview queues and delays on referral to the Home Office but which do not explore other ways in which these problems may amount to a breach of ECHR.

whilst general human rights training stretched to over 100 pages of notes for ECOs the material on refugee/ subsidiary protection family reunion contained no reference to international law, and consisted of two pages of text which was neither comprehensive enough nor entirely accurate. I recommend that the training materials on refugee/ subsidiary protection family reunion be expanded & put in the context of international law. Consideration should be given to having a speaker from UNCHR at the ECO and ECM training course.

- I am concerned that legal representatives cannot receive responses to very reasonable requests for up-dating information from the Somali team in Nairobi. I have seen examples of such requests which are dealt with by a standard response which does not address any of the queries, states that they should 'refrain' from making such enquiries and that the post cannot 'respond regarding individual cases'. In circumstances of the history of neglect of these matters it is essential that enquiries and complaints be dealt with in parallel to the review of all matters. I recommend that this take place, without requiring the intervention of an MP.
- The Visa Section Nairobi Induction Folder contains a section on family reunion which reads as follows: "In many cases, an applicant will attempt to apply for Family Reunion when the marriage took place in Kenya. This is NOT Family Reunion as any marriage which took place in Kenya took place AFTER the sponsor left his country of habitation (sic) residence to seek asylum." This is not legally accurate, as I have explained above in section 3 of this annex. Unless the marriage or birth of a child took place when the refugee was temporarily in Kenya then Kenya will be a country of former habitual residence and applications must be accepted under the refugee family reunion rules. I recommend that the induction booklet be amended and that UKvisas issues guidance on this issue, which should also include reference to Article 8 ECHR family life obligations in relation to those spouses and children who became part of a refugee's family in countries of temporary residence or indeed after the refugee is recognised in the UK. It seems to me unlikely that the European Court of Human Rights or the UK courts would normally find it proportionate for the UK to refuse to admit the spouses and minor children of refugees even if they were unable to satisfy the accommodation and support requirements of the normal settlement rules<sup>44</sup>.
- I also recommend that the DSPs be made more explicit on this issue: although the current advice is not actually wrong it does not assist an ECO

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<sup>44</sup> Sen v Netherlands (2003) 36 EHRR 347 & R v Secretary of State ex parte Belhocine (1999)

to understand that “pre-flight family” might mean “family in countries of interim residence”. It also does not give proper guidance on article 8 ECHR based referrals in all refugee and subsidiary protection family reunion cases. Indeed I cannot understand how it can be lawful to advise that there is apparently no ability whatsoever to consider a family reunion application in accordance with obligations under Article 8 (right to family life) ECHR for those with humanitarian protection and discretionary leave, or to fail to point out the potential relevance of this Article to all matters falling outside the limited ‘right’ to family reunion with pre-flight spouse and minor children of recognised refugees. The Court of Appeal has endorsed the fundamental principle that article 8 requires a fact sensitive analysis of each case in order to conclude whether UK’s obligations under the ECHR are engaged<sup>45</sup>, and thus in the current context whether entry clearance should be issued.

- I am concerned that in Nairobi interviews seem to be a routine part of the family reunion process. If the applicants are set out on the refugee’s asylum questionnaire, and if DNA tests or documents validate their relationships, then no interview should be necessary. This was the position taken by the visa section in Harare and I recommend it. Interviews should be confined to cases where the family member’s relationship cannot be confirmed by documentation or DNA and where their name was not entered correctly on the asylum questionnaire. I make this recommendation particularly in the light of UNHCR’s position that family reunion should take place expeditiously and also given the dangers that refugees face whilst they wait for visas to join their family.
- I am concerned at the position that the Nairobi Visa Section Induction Folder takes on documentation. It states that Somali documents are ‘completely unacceptable’. This cannot be right: documents issued legitimately before the collapse of the Somali state in 1991 must be acceptable. It goes on to indicate that proxy marriages are not acceptable either: again if Somali nationals living in Somalia contract such a marriage which is valid in Somali law then this marriage is valid in English law and must be acceptable to the visa section<sup>46</sup>. The folder also states that Kenyan marriage certificates must be presented for all marriages which took place in Kenya, and that “there is no reason why the applicant should not be able to present one”. A little knowledge of the situation in Kenya for Somali refugees might indicate many reasons why a Somali refugee would not have an official marriage certificate. I draw attention to the EXCOM conclusions & UNCHR’s position that the quest for

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<sup>45</sup> Mahmood [2001] 1 WLR 840

<sup>46</sup> s. 46 Family Law Act 1986, as is correctly reflected in the DSP instruction 13.10

documentation must not become “burdensome”. I recommend that the Induction Folder is revised appropriately.

- I am concerned that the monthly return submitted by ECMs to UKvisas contains no information directly about refugee family reunion cases. I recommend that they are logged separately and monitored for progress to ensure any delays in relation to wait for interview, decision and production of explanatory statements for this set of applicants are known to UKvisas in the future. It is appreciated that refugee generating conditions arise unpredictably, and that it will be a hard job for UKvisas to ensure staffing is appropriate to deal with the ensuing family applications unless they are provided with data in this way. It has been noted that both the posts in Harare and Nairobi had found it necessary to develop Excel spread sheets to monitor progress on refugee family reunion matters. I recommend that guidance is issued by UKvisas to all other posts with refugee family reunion cases to follow this practice.
- I am concerned about the issue of fees. The Nairobi Induction Folder information did not remind staff that applicants for refugee family reunion do not have to pay a fee, or that applicants for family reunion whose sponsor has exceptional leave to remain pay a reduced fee of £75. I recommend that it be clarified that the £75 fee should be applied to this group of applicants, and also to all applicants for family reunion whose sponsors hold the new secondary statuses of discretionary leave and humanitarian protection. I appreciated that asylum seekers granted these new types of subsidiary protection status do not have family reunion rights but of course they may and will make applications for family members to join them under article 8 (right to family life) of the ECHR, and posts will need to know what type of fees to charge them. Finally I was concerned that the Induction Folder contained no information about the waiving of all fees when the UK sponsor is in receipt of income based job seekers allowance/ income support and the applicants for family reunion are destitute. I understand that this is accepted as appropriate by UKvisas. I recommend comprehensive guidance be provided to posts by UKvisas, and in turn by posts to family reunion staff, setting out the fees regime.
- I am concerned that the security situation in Nairobi may once again deteriorate in a way which makes it impossible to admit those without documentation or those with unacceptable documentation, or that such a situation may come about in another post. It is incumbent on UKvisas to develop a contingency plan with the Asylum Directorate of the Immigration & Nationality Department (IND) of the Home Office to deal with family reunion applications, I recommend that such a plan be formulated. A sensible suggestion has been made to me that such applications be made

directly to and processed by IND in such circumstances. IND could then coordinate DNA testing and initial processing.

A number of my recommendations address the issue of ensuring family reunion is dealt with in a timely fashion. It is to be remembered that the applicants are the most vulnerable people whom UNHCR requires are dealt with 'expeditiously'. UNHCR also notes that a failure to reunite families has a social cost for the UK in relation to the slowed integration of refugees into our community. I draw attention to the fact that in December 2003 the UK government announced that it was to spend £2 million on helping those with refugee status to "integrate, work and participate in UK society", in recognition of the benefit that this would bring both to the refugees themselves and but also to the rest of society. There is good evidence that an effective family reunion system is an essential part of the process of integration: without ensuring family reunion the other money may be ineffective in achieving the Government's laudable aim.

### Annex B Statistics for the Visa System for 2002 - 2003

<b>GLOBAL STATISTICS FOR THE FINANCIAL YEAR 2001/2</b>													
Total Applications 2002-03													
<b>Global Summary</b>	Settlement Applications			Non-Settlement Applications			Total UK Applications			Refusal			Grand
<b>Region</b>	Received	Issued	Refused	Received	Issued	Refused	Received	Issued	Refused	Percentage %	C'wealth Received	Dept. Terr Received	Total Received
Australia & South Pacific	6,739	6,085	7	39,769	34,006	188	46,508	40,091	195	0.4%	2	17	46,527
Central Europe & FSU	4,680	4,397	323	261,578	232,356	17,722	266,258	236,753	18,045	6.8%	5,055	786	272,099
Eq. Africa	9,324	5,602	2,271	294,887	197,634	86,437	304,211	203,236	88,708	29.2%	1,405	29	305,645
Far East	1,458	1,474	114	162,391	154,957	15,371	163,849	156,431	15,485	9.5%	924	83	164,856
Latin America	1,272	1,119	65	28,270	28,404	2,691	29,542	29,523	2,756	9.3%	5,103	1,875	36,520
Middle East	2,679	2,019	387	198,068	175,485	13,529	200,747	177,504	13,916	6.9%	3,845	100	204,692
NE & Northern Africa	2,395	2,130	434	91,136	82,474	8,458	93,531	84,604	8,892	9.5%	1,034	235	94,800
North America	3,996	3,799	19	89,451	87,211	420	93,447	91,010	439	0.5%	3	642	94,092
South Asia	20,036	16,945	4,898	348,101	274,855	61,740	368,137	291,800	66,638	18.1%	1,834	112	370,083
South East Asia	5,064	4,356	802	95,288	86,538	9,474	100,352	90,894	10,276	10.2%	1,052	126	101,530
Southern Africa	3,565	3,473	127	51,755	44,407	7,294	55,320	47,880	7,421	13.4%	71	1	55,392
Aouthern Europe	2,589	2,134	456	76,443	66,133	9,377	79,032	68,267	9,833	12.4%	1,232	552	80,816
Ukvisas, London	0	0	0	1,007	1,007	0	1,007	1,007	0	0.0%	0	0	1,007
West Indies & Atlantic	1,000	929	129	16,428	13,068	3,199	17,428	13,997	3328	19.1%	309	1601	19,338
Western Europe	703	658	55	121,788	113,876	3,846	122,491	114,534	3901	3.2%	467	254	123,212
<b>Total</b>	<b>65,500</b>	<b>55,120</b>	<b>10,087</b>	<b>1,876,360</b>	<b>1,592,411</b>	<b>239,746</b>	<b>1,941,860</b>	<b>1,647,531</b>	<b>249,833</b>	<b>12.9%</b>	<b>22,336</b>	<b>6,413</b>	<b>1,970,609</b>

<b>AUSTRALIA AND SOUTH PACIFIC</b>													
Total Applications 2002-03													
<b>Aust &amp; S Pacific</b>	Settlement Applications			Non-Settlement Applications			Total UK Applications			Refusal			Grand
	Received	Issued	Refused	Received	Issued	Refused	Received	Issued	Refused	Percentage	C'wealth	Dept. Terr	Total
<b>Post</b>	Received	Issued	Refused	Received	Issued	Refused	Received	Issued	Refused	%	Received	Received	Received
Canberra	4,663	4,553	1	30,577	29,605	57	35,240	34,158	58	0.2%	2	0	35,242
Honiara	6	6	0	7	7	0	13	13	0	0.0%	0	0	13
Nuku'alofa	3	1	0	16	15	1	19	16	1	5.3%	0	0	19
Pt Moresby	15	14	0	380	373	7	395	387	7	1.8%	0	0	395
Suva	7	5	1	847	711	53	854	716	54	6.3%	0	0	854
Vila	2	2	0	0	0	0	2	2	0	0.0%	0	0	2
Wellington	2,043	1,504	5	7,942	3,295	70	9,985	4,799	75	0.8%	0	17	10,002
<b>Total</b>	<b>6,739</b>	<b>6,085</b>	<b>7</b>	<b>39,769</b>	<b>34,006</b>	<b>188</b>	<b>46,508</b>	<b>40,091</b>	<b>195</b>	<b>0.4%</b>	<b>2</b>	<b>17</b>	<b>46,527</b>

<b>CENTRAL EUROPE AND FORMER SOVIET UNION</b>													
Total Applications 2002-03													
<b>C Europe &amp; FSU</b>	Settlement Applications			Non-Settlement Applications			Total UK Applications			Refusal			Grand
<b>Post</b>	Received	Issued	Refused	Received	Issued	Refused	Received	Issued	Refused	Percentage	C'wealth	Dept. Terr	Total
										%	Received	Received	Received
Almaty	90	90	0	7,533	6,592	655	7,623	6,682	655	8.6%	18	3	7,644
Ashgabat	8	8	0	1,387	1,374	13	1,395	1,382	13	0.9%	1	0	1,396
Baku	40	39	4	3,159	2,995	156	3,199	3,034	160	5.0%	7	5	3,211
Belgrade	80	72	6	14,459	13,565	327	14,539	13,637	333	2.3%	74	22	14,635
Bratislava	227	218	0	22,192	20,629	895	22,419	20,847	895	4.0%	394	210	23,023
Buchrest	238	246	33	25,129	20,207	3,121	25,367	20,453	3154	12.4%	164	51	25,582
Budapest	171	174	1	1,347	1,234	72	1,518	1,408	73	4.8%	297	38	1,853
Ekaterinburg	114	112	6	4,057	3,905	107	4,171	4,017	113	2.7%	0	13	4,184
Kiev	484	514	37	24,250	19,946	3,825	24,734	20,460	3862	15.6%	17	58	24,809
Minsk	95	85	3	8,900	8,560	301	8,995	8,645	304	3.4%	1	3	8,999
Moscow	670	645	48	73,301	66,949	2,283	73,971	67,594	2331	3.2%	200	167	74,338
Prague	316	322	2	2,081	2,076	44	2,397	2,398	46	1.9%	2,093	11	4,501
Riga	78	78	0	1,677	1,388	291	1,755	1,466	291	16.6%	54	9	1,818
St Petersburg	222	220	2	14,056	13,347	623	14,278	13,567	625	4.4%	19	30	14,327
Sarajevo	63	63	0	3,188	3,113	75	3,251	3,176	75	2.3%	1	4	3,256
Skopje	187	88	86	3,683	2,282	318	3,870	2,370	404	10.4%	3	0	3,873
Sofia	174	163	21	22,531	17,991	2,794	22,705	18,154	2815	12.4%	122	18	22,845
Tallinn	52	44	2	607	458	144	659	502	146	22.2%	188	24	871
Tashkent	29	26	3	2,871	2,149	611	2,900	2,175	614	21.2%	70	2	2,972
Tbilisi	20	20	0	3,097	2,864	230	3,117	2,884	230	7.4%	2	1	3,120
Tirana	729	591	53	2,943	2,579	258	3,672	3,170	311	8.5%	0	0	3,672
Vilnius	133	133	0	989	573	67	1,122	706	67	6.0%	12	3	1,137
Warsaw	352	347	5	1,837	1,620	173	2,189	1,967	178	8.1%	1,112	28	3,329
Yerevan	13	12	3	1,095	937	140	1,108	949	143	12.9%	1	5	1,114
Zagreb	95	87	8	15,209	15,023	199	15,304	15,110	207	1.4%	205	81	15,590
<b>Total</b>	<b>4,680</b>	<b>4,397</b>	<b>323</b>	<b>261,578</b>	<b>232,356</b>	<b>17,722</b>	<b>266,258</b>	<b>236,753</b>	<b>18,045</b>	<b>6.8%</b>	<b>5,055</b>	<b>786</b>	<b>272,099</b>

<b>EQUATORIAL AFRICA</b>													
Total Applications 2002-03													
<b>Equatorial Africa</b>	Settlement Applications			Non-Settlement Applications			Total UK Applications			Refusal			Grand
	Received	Issued	Refused	Received	Issued	Refused	Received	Issued	Refused	Percentage	C'wealth	Dept. Terr	Total
<b>Post</b>	Received	Issued	Refused	Received	Issued	Refused	Received	Issued	Refused	%	Received	Received	Received
Abidjan	53	56	9	3,082	2,194	619	3,135	2,250	628	20.0%	986	0	4,121
Abuja	175	176	34	28,770	22,136	7,308	28,945	22,312	7342	25.4%	0	0	28,945
Accra	1,229	1,038	568	64,455	30,995	33,417	65,684	32,033	33985	51.7%	0	4	65,688
Addis Ababa	2,308	805	549	5,126	4,282	775	7,434	5,087	1324	17.8%	57	0	7,491
Antananarivo	6	8	0	314	274	29	320	282	29	9.1%	0	0	320
Bamako	0	0	0	15	15	0	15	15	0	0.0%	0	0	15
Banjul	296	259	88	7,001	4,632	2,806	7,297	4,891	2894	39.7%	1	0	7,298
Dakar	26	37	5	1,635	1,365	402	1,661	1,402	407	24.5%	339	0	2,000
Dar Es Salaam	227	183	39	8,814	7,079	1,713	9,041	7,262	1752	19.4%	0	0	9,041
Freetown	279	235	114	6,381	5,331	1,454	6,660	5,566	1568	23.5%	0	0	6,660
Kampala	476	382	252	17,178	11,325	4,707	17,654	11,707	4959	28.1%	1	0	17,655
Kigali	0	0	0	151	151	0	151	151	0	0.0%	0	0	151
Kinshasa	361	236	81	3,182	1,767	1,264	3,543	2,003	1345	38.0%	21	2	3,566
Lagos	1,047	1,024	377	114,253	79,204	25,502	115,300	80,228	25879	22.4%	0	23	115,323
Nairobi	2,530	928	117	21,752	15,958	4,770	24,282	16,886	4887	20.1%	0	0	24,282
Port Louis	160	144	16	8,676	8,047	729	8,836	8,191	745	8.4%	0	0	8,836
Victoria	17	17	2	157	145	19	174	162	21	12.1%	0	0	174
Yaounde	134	74	20	3,945	2,734	923	4,079	2,808	943	23.1%	0	0	4,079
<b>Total</b>	<b>9,324</b>	<b>5,602</b>	<b>2,271</b>	<b>294,887</b>	<b>197,634</b>	<b>86,437</b>	<b>304,211</b>	<b>203,236</b>	<b>88,708</b>	<b>29.2%</b>	<b>1,405</b>	<b>29</b>	<b>305,645</b>

<b>FAR EAST</b>													
Total Applications 2002-03													
<b>Far East</b>	Settlement Applications			Non-Settlement Applications			Total UK Applications			Refusal			Grand
	Received	Issued	Refused	Received	Issued	Refused	Received	Issued	Refused	Percentage	C'wealth	Dept. Terr	Total
<b>Post</b>	Received	Issued	Refused	Received	Issued	Refused	Received	Issued	Refused	%	Received	Received	Received
Guangzhou	497	461	87	28,583	25,825	3,193	29,080	26,286	3280	11.3%	29	41	29,150
Beijing	253	291	11	62,162	60,819	8,906	62,415	61,110	8917	14.3%	402	0	62,817
Seoul	75	79	1	1,784	1,539	195	1,859	1,618	196	10.5%	54	29	1,942
Shanghai	94	91	4	25,031	22,731	2,009	25,125	22,822	2013	8.0%	50	2	25,177
Taipei	81	81	0	37,759	37,759	0	37,840	37,840	0	0.0%	8	10	37,858
Tokyo	443	462	8	4,979	5,011	312	5,422	5,473	320	5.9%	381	1	5,804
Ulaanbaatar	15	9	3	2,093	1,273	756	2,108	1,282	759	36.0%	0	0	2,108
<b>Total</b>	<b>1,458</b>	<b>1,474</b>	<b>114</b>	<b>162,391</b>	<b>154,957</b>	<b>15,371</b>	<b>163,849</b>	<b>156,431</b>	<b>15,485</b>	<b>9.5%</b>	<b>924</b>	<b>83</b>	<b>164,856</b>

<b>LATIN AMERICA</b>													
Total Applications 2002-03													
<b>Latin America</b>	<b>Settlement Applications</b>			<b>Non-Settlement Applications</b>			<b>Total UK Applications</b>			<b>Refusal</b>			<b>Grand</b>
<b>Post</b>	Received	Issued	Refused	Received	Issued	Refused	Received	Issued	Refused	Percentage %	C'wealth Received	Dept. Terr Received	Total Received
Belmopan	9	9	0	30	28	1	39	37	1	2.6%	5	4	48
Bogota	236	187	49	16,470	16,799	2,278	16,706	16,986	2327	13.9%	1,249	181	18,136
Brasilia	0	0	0	150	150	0	150	150	0	0.0%	24	0	174
Buenos Aires	206	203	3	661	641	20	867	844	23	2.7%	467	11	1,345
Caracas	60	56	0	572	538	24	632	594	24	3.8%	187	5	824
Guatemala City	28	28	0	64	64	0	92	92	0	0.0%	298	4	394
Havana	103	101	2	1,491	1,702	83	1,594	1,803	85	5.3%	965	152	2,711
La Paz	15	15	0	67	65	2	82	80	2	2.4%	80	4	166
Lima	96	0	0	4,078	3,920	158	4,174	3,920	158	3.8%	261	20	4,455
Managua	5	5	0	13	12	1	18	17	1	5.6%	47	127	192
Mexico City	107	106	1	424	417	7	531	523	8	1.5%	425	6	962
Montevideo	8	8	0	48	48	0	56	56	0	0.0%	62	11	129
Panama City	16	16	0	182	177	5	198	193	5	2.5%	175	9	382
Quito	63	80	5	2,799	2,745	49	2,862	2,825	54	1.9%	169	7	3,038
Rio de Janeiro	255	240	5	668	552	56	923	792	61	6.6%	257	0	1,180
San Jose	7	7	0	85	85	0	92	92	0	0.0%	107	9	208
Sans Salvador	4	4	0	36	35	1	40	39	1	2.5%	69	4	113
Santiago	49	49	0	375	372	3	424	421	3	0.7%	178	0	602
Tegucigalpa	5	5	0	57	54	3	62	59	3	4.8%	78	1,321	1,461
<b>Total</b>	1,272	1,119	65	28,270	28,404	2,691	29,542	29,523	2,756	9.3%	5,103	1,875	36,520

<b>MIDDLE EAST</b>													
Total Applications 2002-03													
<b>Mid East</b>	Settlement Applications			Non-Settlement Applications			Total UK Applications			Refusal			Grand
	Received	Issued	Refused	Received	Issued	Refused	Received	Issued	Refused	Percentage	C'wealth	Dept. Terr	Total
<b>Post</b>										%	Received	Received	Received
Abu Dhabi	74	67	9	21,617	19,339	946	21,691	19,406	955	4.4%	331	0	22,022
Bahrain	157	144	3	11,256	11,055	130	11,413	11,199	133	1.2%	11	0	11,424
Doha	23	16	4	9,938	9,436	376	9,961	9,452	380	3.8%	47	0	10,008
Dubai	195	178	17	31,680	25,610	6,070	31,875	25,788	6087	19.1%	1,760	6	33,641
Jedda	209	181	23	17,749	16,146	624	17,958	16,327	647	3.6%	229	0	18,187
Kuwait	145	75	7	39,690	36,135	740	39,835	36,210	747	1.9%	92	15	39,942
Muscat	80	79	1	10,673	10,467	206	10,753	10,546	207	1.9%	961	0	11,714
Riyadh	76	64	12	22,300	21,365	381	22,376	21,429	393	1.8%	333	71	22,780
Sana'a	201	309	98	3,502	3,251	392	3,703	3,560	490	13.2%	66	0	3,769
Tehran	1,519	906	213	29,663	22,681	3,664	31,182	23,587	3877	12.4%	15	8	31,205
<b>Total</b>	<b>2,679</b>	<b>2,019</b>	<b>387</b>	<b>198,068</b>	<b>175,485</b>	<b>13,529</b>	<b>200,747</b>	<b>177,504</b>	<b>13,916</b>	<b>6.9%</b>	<b>3,845</b>	<b>100</b>	<b>204,692</b>

<b>NORTH AMERICA</b>													
Total Applications 2002-03													
<b>N America</b>	Settlement Applications			Non-Settlement Applications			Total UK Applications			Refusal			Grand
										Percentage	C'wealth	Dept. Terr	Total
<b>Post</b>	Received	Issued	Refused	Received	Issued	Refused	Received	Issued	Refused	%	Received	Received	Received
Chicago	472	444	4	11,048	10,944	53	11,520	11,388	57	0.5%	0	39	11,559
Los Angeles	930	887	3	20,366	19,623	91	21,296	20,510	94	0.4%	3	108	21,407
New York	1,356	1,332	3	40,281	39,828	157	41,637	41,160	160	0.4%	0	460	42,097
Ottawa	1,238	1,136	9	17,756	16,816	119	18,994	17,952	128	0.7%	0	35	19,029
<b>Total</b>	<b>3,996</b>	<b>3,799</b>	<b>19</b>	<b>89,451</b>	<b>87,211</b>	<b>420</b>	<b>93,447</b>	<b>91,010</b>	<b>439</b>	<b>0.5%</b>	<b>3</b>	<b>642</b>	<b>94,092</b>

<b>NEAR EAST AND NORTH AFRICA</b>													
Total Applications 2002-03													
<b>NE &amp; N. Africa</b>	Settlement Applications			Non-Settlement Applications			Total UK Applications			Refusal			Grand
	Received	Issued	Refused	Received	Issued	Refused	Received	Issued	Refused	Percentage	C'wealth	Dept. Terr	Total
<b>Post</b>	Received	Issued	Refused	Received	Issued	Refused	Received	Issued	Refused	%	Received	Received	Received
Algiers	223	210	12	12,219	9,682	1,859	12,442	9,892	1871	15.0%	17	0	12,459
Amman	301	251	21	10,598	9,542	215	10,899	9,793	236	2.2%	132	0	11,031
Beirut	131	113	12	7,328	6,898	256	7,459	7,011	268	3.6%	36	0	7,495
Cairo	214	175	100	21,443	22,410	2,250	21,657	22,585	2350	10.9%	113	0	21,770
Casablanca	488	364	81	6,816	6,436	339	7,304	6,800	420	5.8%	161	86	7,551
Damascus	280	368	61	5,631	4,766	565	5,911	5,134	626	10.6%	158	0	6,069
Jerusalem	50	44	1	1,489	1,382	33	1,539	1,426	34	2.2%	7	5	1,551
Khartoum	187	132	54	4,403	3,087	559	4,590	3,219	613	13.4%	12	0	4,602
Rabat	0	0	0	370	370	0	370	370	0	0.0%	92	127	589
Tel Aviv	197	213	5	1,249	1,222	95	1,446	1,435	100	6.9%	187	17	1,650
Tripoli	91	90	1	14,943	12,931	1,558	15,034	13,021	1559	10.4%	0	0	15,034
Tunis	233	170	86	4,647	3,748	729	4,880	3,918	815	16.7%	119	0	4,999
<b>Total</b>	<b>2,395</b>	<b>2,130</b>	<b>434</b>	<b>91,136</b>	<b>82,474</b>	<b>8,458</b>	<b>93,531</b>	<b>84,604</b>	<b>8,892</b>	<b>9.5%</b>	<b>1,034</b>	<b>235</b>	<b>94,800</b>

<b>SOUTH ASIA</b>													
Total Applications 2002-03													
<b>South Asia</b>	Settlement Applications			Non-Settlement Applications			Total UK Applications			Refusal			Grand
	Received	Issued	Refused	Received	Issued	Refused	Received	Issued	Refused	Percentage	C'wealth	Dept. Terr	Total
<b>Post</b>										%	Received	Received	Received
Chennai (Madras)	56	625	38	54,319	45,568	8,615	54,375	46,193	8653	15.9%	0	5	54,380
Colombo	1,474	1,218	237	20,357	16,389	3,342	21,831	17,607	3579	16.4%	4	76	21,911
Dhaka	4,386	4,577	1,262	25,251	16,927	9,396	29,637	21,504	10658	36.0%	0	0	29,637
Islamabad	5,012	3,429	1,004	57,274	39,415	6,666	62,286	42,844	7670	12.3%	0	0	62,286
Karachi	3,891	2,783	1,158	7,866	7,005	1,345	11,757	9,788	2503	21.3%	0	0	11,757
Kathmandu	271	199	32	5,924	3,165	2,554	6,195	3,364	2586	41.7%	1,734	0	7,929
Kolkata (Calcutta)	152	156	14	10,950	10,620	315	11,102	10,776	329	3.0%	0	0	11,102
Mumbai (Bombay)	2,184	1,844	416	80,940	69,932	10,491	83,124	71,776	10907	13.1%	49	20	83,193
New Delhi	2,610	2,114	737	85,220	65,834	19,016	87,830	67,948	19753	22.5%	47	11	87,888
<b>Total</b>	20,036	16,945	4,898	348,101	274,855	61,740	368,137	291,800	66,638	18.1%	1,834	112	370,083

<b>SOUTH EAST ASIA</b>													
Total Applications 2002-03													
<b>South East Asia</b>	Settlement Applications			Non-Settlement Applications			Total UK Applications			Refusal			Grand
	Received	Issued	Refused	Received	Issued	Refused	Received	Issued	Refused	Percentage	C'wealth	Dept. Terr	Total
<b>Post</b>	Received	Issued	Refused	Received	Issued	Refused	Received	Issued	Refused	%	Received	Received	Received
Bandar S B	22	22	0	645	638	7	667	660	7	1.0%	1	0	668
Bangkok	2,542	2,139	320	30,180	28,048	2,969	32,722	30,187	3289	10.1%	103	0	32,825
Hanoi	184	160	17	2,931	2,807	163	3,115	2,967	180	5.8%	25	0	3,140
Hong Kong	384	303	81	5,096	4,591	346	5,480	4,894	427	7.8%	275	0	5,755
Jakarta	247	232	15	15,657	15,016	641	15,904	15,248	656	4.1%	256	0	16,160
Kuala Lumpur	557	523	12	3,623	3,056	446	4,180	3,579	458	11.0%	0	0	4,180
Manila	953	757	187	29,531	25,605	3,887	30,484	26,362	4074	13.4%	256	112	30,852
Rangoon	36	32	3	2,342	1,646	848	2,378	1,678	851	35.8%	136	0	2,514
Singapore	139	188	167	5,283	5,131	167	5,422	5,319	334	6.2%	0	14	5,436
<b>Total</b>	<b>5,064</b>	<b>4,356</b>	<b>802</b>	<b>95,288</b>	<b>86,538</b>	<b>9,474</b>	<b>100,352</b>	<b>90,894</b>	<b>10,276</b>	<b>10.2%</b>	<b>1,052</b>	<b>126</b>	<b>101,530</b>

<b>SOUTHERN AFRICA</b>													
Total Applications 2002-03													
<b>Sth. Africa</b>	Settlement Applications			Non-Settlement Applications			Total UK Applications			Refusal			Grand
<b>Post</b>	Received	Issued	Refused	Received	Issued	Refused	Received	Issued	Refused	Percentage	C'wealth	Dept. Terr	Total
										%	Received	Received	Received
Gabarone	54	53	1	1,337	1,191	134	1,391	1,244	135	9.7%	0	0	1,391
Harare	1,551	1,473	78	12,826	8,664	4,162	14,377	10,137	4,240	29.5%	0	0	14,377
Lilongwe	65	56	2	523	348	35	588	404	37	6.3%	25	0	613
Luanda	9	8	1	2,322	2,201	121	2,331	2,209	122	5.2%	41	1	2,373
Lusaka	97	81	14	4,787	4,309	698	4,884	4,390	712	14.6%	0	0	4,884
Maputo	7	7	0	759	726	27	766	733	27	3.5%	0	0	766
Maseru	5	4	0	160	128	30	165	132	30	18.2%	0	0	165
Mbabane	8	8	0	331	310	14	339	318	14	4.1%	0	0	339
Pretoria	1,760	1,783	31	27,575	25,481	1,987	29,335	27,264	2,018	6.9%	0	0	29,335
Windhoek	9	0	0	1,135	1,049	86	1,144	1,049	86	7.5%	5	0	1,149
<b>Total</b>	<b>3,565</b>	<b>3,473</b>	<b>127</b>	<b>51,755</b>	<b>44,407</b>	<b>7,294</b>	<b>55,320</b>	<b>47,880</b>	<b>7,421</b>	<b>13.4%</b>	<b>71</b>	<b>1</b>	<b>55,392</b>

<b>SOUTHERN EUROPE</b>													
Total Applications 2002-03													
<b>S Europe</b>	Settlement Applications			Non-Settlement Applications			Total UK Applications			Refusal			Grand
										Percentage	C'wealth	Dept. Terr	Total
<b>Post</b>	Received	Issued	Refused	Received	Issued	Refused	Received	Issued	Refused	%	Received	Received	Received
Ankara	20	19	1	4,870	4,618	102	4,890	4,637	103	2.1%	8	2	4,900
Athens	37	36	1	988	884	81	1,025	920	82	8.0%	280	0	1,305
Istanbul	2,120	1,617	451	56,483	46,976	8,542	58,603	48,593	8,993	15.3%	46	64	58,713
Lisbon	15	15	0	1,302	1,256	41	1,317	1,271	41	3.1%	859	1	2,177
Madrid	41	60	1	5,415	5,528	54	5,456	5,588	55	1.0%	39	480	5,975
Nicosia	181	179	2	6,642	6,102	540	6,823	6,281	542	7.9%	0	5	6,828
Valetta	175	208	0	743	769	17	918	977	17	1.9%	0	0	918
<b>Total</b>	<b>2,589</b>	<b>2,134</b>	<b>456</b>	<b>76,443</b>	<b>66,133</b>	<b>9,377</b>	<b>79,032</b>	<b>68,267</b>	<b>9,833</b>	<b>12.4%</b>	<b>1,232</b>	<b>552</b>	<b>80,816</b>

<b>WEST INDIES AND ATLANTIC</b>													
Total Applications 2002-03													
<b>W Indies &amp; Atlantic</b>	Settlement Applications			Non-Settlement Applications			Total UK Applications			Refusal			Grand
										Percentage	C'wealth	Dept. Terr	Total
<b>Post</b>	Received	Issued	Refused	Received	Issued	Refused	Received	Issued	Refused	%	Received	Received	Received
Ascension Is	0	0	0	94	94	0	94	94	0	0.0%	0	94	188
Bridgetown	187	188	7	1,046	974	88	1,233	1,162	95	7.7%	0	86	1,319
Georgetown	140	135	13	2,284	1,955	284	2,424	2,090	297	12.3%	0	760	3,184
Kingston	520	458	102	9,665	6,862	2,634	10,185	7,320	2,736	26.9%	27	178	10,390
Nassau	5	5	0	369	368	1	374	373	1	0.3%	0	9	383
Port of Spain	104	103	4	1,512	1,499	133	1,616	1,602	137	8.5%	53	8	1,677
Port Stanley	1	1	0	47	47	0	48	48	0	0.0%	0	0	48
Santo Domingo	43	39	3	1,411	1,269	59	1,454	1,308	62	4.3%	229	466	2,149
<b>Total</b>	1000	929	129	16,428	13,068	3,199	17,428	13,997	3,328	19.1%	309	1,601	19,338

<b>WESTERN EUROPE</b>													
Total Applications 2002-03													
<b>Western Europe</b>	Settlement Applications			Non-Settlement Applications			Total UK Applications			Refusal			Grand
	Received	Issued	Refused	Received	Issued	Refused	Received	Issued	Refused	Percentage	C'wealth	Dept. Terr	Total
<b>Post</b>	Received	Issued	Refused	Received	Issued	Refused	Received	Issued	Refused	%	Received	Received	Received
Amsterdam	147	135	5	10,264	9,622	275	10,411	9,757	280	2.7%	100	0	10,511
Berlin	0	0	0	549	536	0	549	536	0	0.0%	0	0	549
Berne	0	0	0	98	98	0	98	98	0	0.0%	0	0	98
Brussels	42	28	1	4,859	3,964	37	4,901	3,992	38	0.8%	16	0	4,917
Copenhagen	16	12	4	3,359	3,068	163	3,375	3,080	167	4.9%	2	2	3,379
Dublin	131	102	31	11,876	10,774	763	12,007	10,876	794	6.6%	2	5	12,014
Dusseldorf	127	141	5	29,655	27,488	884	29,782	27,629	889	3.0%	63	23	29,868
Geneva	41	42	1	9,942	8,954	197	9,983	8,996	198	2.0%	57	18	10,058
Helsinki	5	3	1	926	889	31	931	892	32	3.4%	2	3	936
Luxembourg	1	1	0	396	396	1	397	397	1	0.3%	0	0	397
Oslo	15	14	0	4,347	4,113	46	4,362	4,127	46	1.1%	80	2	4,444
Paris	96	97	4	23,820	23,727	514	23,916	23,824	518	2.2%	82	0	23,998
Reykjavik	1	1	0	215	215	0	216	216	0	0.0%	0	0	216
Rome	58	54	2	14,683	13,043	742	14,741	13,097	744	5.0%	27	14	14,782
Stockholm	16	15	0	4,424	4,221	79	4,440	4,236	79	1.8%	9	9	4,458
Vienna	7	13	1	2,375	2,768	114	2,382	2,781	115	4.8%	27	178	2,587
<b>Total</b>	703	658	55	121,788	113,876	3,846	122,491	114,534	3901	3.2%	467	254	123,212

## **Annex C Immigration Rules Relating to Visitors and Students**

### **PART 2: PERSONS SEEKING TO ENTER OR REMAIN IN THE UNITED KINGDOM FOR VISITS.**

#### **VISITORS**

##### **Requirements for leave to enter as a visitor**

40. For the purpose of paragraphs 41-46 a visitor includes a person living and working outside the United Kingdom who comes to the United Kingdom to transact business (such as attending meetings and briefings, fact finding, negotiating or making contracts with United Kingdom businesses to buy or sell goods or services). A visitor seeking leave to enter or remain for private medical treatment must meet the requirements of paragraphs 51 or 54.

41. The requirements to be met by a person seeking leave to enter the United Kingdom as a visitor are that he:

- (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.

##### **Leave to enter as a visitor**

42. A person seeking leave to enter to the United Kingdom as a visitor may be admitted for a period not exceeding 6 months, subject to a condition prohibiting employment, provided the Immigration Officer is satisfied that each of the requirements of paragraph 41 is met.

##### **Refusal of leave to enter as a visitor**

43. Leave to enter as a visitor is to be refused if the Immigration Officer is not satisfied that each of the requirements of paragraph 41 is met.

##### **Requirements for an extension of stay as a visitor**

44. Six months is the maximum permitted leave which may be granted to a visitor. The requirements for an extension of stay as a visitor are that the applicant:

- (i) meets the requirements of paragraph 41 (ii)-(vii); and
- (ii) has not already spent, or would not as a result of an extension of stay spend, more than 6 months in total in the United Kingdom as a visitor.

Any period spent as a seasonal agricultural worker is to be counted as a period spent as a visitor.

**Extension of stay as a visitor**

45. An extension of stay as a visitor may be granted, subject to a condition prohibiting employment, provided the Secretary of State is satisfied that each of the requirements of paragraph 44 is met.

**Refusal of extension of stay as a visitor**

46. An extension of stay as a visitor is to be refused if the Secretary of State is not satisfied that each of the requirements of paragraph 44 is met.

**VISITORS IN TRANSIT**

**Requirements for admission as a visitor in transit to another country**

47. The requirements to be met by a person (not being a member of the crew of a ship, aircraft, hovercraft, hydrofoil or train) seeking leave to enter the United Kingdom as a visitor in transit to another country are that he:

- (i) is in transit to a country outside the common travel area; and
- (ii) has both the means and the intention of proceeding at once to another country; and
- (iii) is assured of entry there; and
- (iv) intends and is able to leave the United Kingdom within 48 hours.

**Leave to enter as a visitor in transit**

48. A person seeking leave to enter the United Kingdom as a visitor in transit may be admitted for a period not exceeding 48 hours with a prohibition on employment provided the Immigration Officer is satisfied that each of the requirements of paragraph 47 is met.

**Refusal of leave to enter as a visitor in transit**

49. Leave to enter as a visitor in transit is to be refused if the Immigration Officer is not satisfied that each of the requirements of paragraph 47 is met.

**Extension of stay as a visitor in transit**

50. The maximum permitted leave which may be granted to a visitor in transit is 48 hours. An application for an extension of stay beyond 48 hours from a person admitted in this category is to be refused.

**VISITORS SEEKING TO ENTER OR REMAIN FOR PRIVATE MEDICAL TREATMENT**

**Requirements for leave to enter as a visitor for private medical treatment**

51. The requirements to be met by a person seeking leave to enter the United Kingdom as a visitor for private medical treatment are that he:

- (i) meets the requirements set out in paragraph 41 (iii)-(vii) for entry as a visitor; and
- (ii) in the case of a person suffering from a communicable disease, has satisfied the Medical Inspector that there is no danger to public health; and
- (iii) can show, if required to do so, that any proposed course of treatment is of finite

duration; and

(vi) intends to leave the United Kingdom at the end of his treatment; and

(v) can produce satisfactory evidence, if required to do so, of:

(a) the medical condition requiring consultation or treatment; and

(b) satisfactory arrangements for the necessary consultation or treatment at his own expense; and

(c) the estimated costs of such consultation or treatment; and

(d) the likely duration of his visit; and

(e) sufficient funds available to him in the United Kingdom to meet the estimated costs and his undertaking to do so.

**Leave to enter as a visitor for private medical treatment**

52. A person seeking leave to enter the United Kingdom as a visitor for private medical treatment may be admitted for a period not exceeding 6 months, subject to a condition prohibiting employment, provided the Immigration Officer is satisfied that each of the requirements of paragraph 51 is met.

53. Leave to enter as a visitor for private medical treatment is to be refused if the Immigration Officer is not satisfied that each of the requirements of paragraph 51 is met.

**Requirements for an extension of stay as a visitor for private medical treatment**

54. The requirements for an extension of stay as a visitor to undergo or continue private medical treatment are that the applicant:

(i) meets the requirements set out in paragraph 41 (iii)-(vii) and paragraph 51 (ii)-(v); and

(ii) has produced evidence from a registered medical practitioner who holds an NHS consultant post or who appears in the Specialist Register of the General Medical Council of satisfactory arrangements for private medical consultation or treatment and its likely duration; and, where treatment has already begun, evidence as to its progress; and

(iii) can show that he has met, out of the resources available to him, any costs and expenses incurred in relation to his treatment in the United Kingdom; and

(iv) has sufficient funds available to him in the United Kingdom to meet the likely costs of his treatment and intends to meet those costs.

**Extension of stay as a visitor for private medical treatment**

55. An extension of stay to undergo or continue private medical treatment may be granted, with a prohibition on employment, provided the Secretary of State is satisfied that each of the requirements of paragraph 54 is met.

**Refusal of extension of stay as a visitor for private medical treatment**

56. An extension of stay as a visitor to undergo or continue private medical treatment is to be refused if the Secretary of State is not satisfied that each of the requirements of paragraph 54 is met.

**PART 3: PERSONS SEEKING TO ENTER OR REMAIN IN THE UNITED KINGDOM FOR STUDIES.**

**STUDENTS**

**Requirements for leave to enter as a student**

57. The requirements to be met by a person seeking leave to enter the United Kingdom as a student are that he:

- (i) has been accepted for a course of study at:
  - (a) a publicly funded institution of further or higher education; or
  - (b) a bona fide private education institution which maintains satisfactory records of enrolment and attendance; or
  - (c) an independent fee paying school outside the maintained sector; and
- (ii) is able and intends to follow either:
  - (a) a recognised full time degree course at a publicly funded institution of further or higher education; or
  - (b) a weekday full time course involving attendance at a single institution for a minimum of 15 hours organised daytime study per week of a single subject, or directly related subjects; or
  - (c) a full time course of study at an independent fee paying school; and
- (iii) if under the age of 16 years is enrolled at an independent fee paying school on a full time course of studies which meets the requirements of the Education Act 1944; and
- (iv) intends to leave the United Kingdom at the end of his studies; and
- (v) does not intend to engage in business or to take employment, except part time or vacation work undertaken with the consent of the Secretary of State for Employment; and
- (vi) is able to meet the costs of his course and accommodation and the maintenance of himself and any dependants without taking employment or engaging in business or having recourse to public funds.

## **Annex D: Summary of Recommendations**

(Paragraph references for the main report are in brackets.)

### **Overview of the Visa System**

1. The British Council has put a great deal of resources into the production of publications to assist foreign students, educational institutions and posts in the processing of student visa applications, which in the context of the thousands of new visa applications that posts will be handling is entirely appropriate. I commend this work and recommend its use. **(11)**

### **Overview of Non-Settlement Applications for Visas Made in the Period April 2002 – April 2003**

2. I recommend that checks need to be made where posts which deal with a significant number of applicants have dramatic rises or declines in their refusal rates. Systems need to ensure that any drastic increase in refusing applicants is reflective of the quality of applications rather than a more restrictive regime, and vice versa. It would equally be of assistance to UKvisas if research could also be done into the increasing refusal rate. I recommend that research is commissioned to establish whether rising refusals reflect greater numbers of poor quality applications or whether there are other less legitimate factors involved. **(24)**

3. I join Citizens Advice in recommending that research be commissioned into the complex issue of seasonal variations in refusal rates. **(25)**

4. I recommend that the UKvisas computer system, the Central Reference System, be refined so that it is possible to understand the number of students in the non-appealable group who were granted visas, and to enable a breakdown by marital status. **(27)**

### **Analysis of the File Sample**

#### **Limitations of the Review**

5. I understand that it is now compulsory for all applications to be made on the VAF1 2003 form. I recommend that all old forms be thrown away and not be accepted so that entry clearance officers (ECOs) and I have the same

information from all applicants. I also recommend that there should be no ad hoc additional forms issued by posts in the future. **(30)**

6. I recommend that UKvisas considers whether an equal service is being offered to all applicants if visa application form translations are only available in European languages. **(31)**

7. I recommend that entry clearance officers convert amounts of money into sterling so that the value of resources available to the applicant is apparent on the file. **(32)**

8. I recommend that there should be full interview notes and not just brief notes of interviews, as notes alone do not provide a sufficient basis of reviewing a decision. Dame Elizabeth Anson also held the view that a “question and answer” format was preferable, and this practice is advocated in the Best Practice Guide to Entry Clearance Work. **(33)**

### **Accuracy of the Sample**

9. I recommend that entry clearance managers (ECMs) are reminded of the criteria for logging matters relevant to the Monitor, and also that those who apply under concessions outside the Immigration Rules, or whose applications are dealt with under such concessions, are entitled to contend that the decisions are not in accordance with the law. **(34)**

### **Applicants Wrongly Denied Rights of Appeal**

#### **Recommendation with Regards to Appeal Parameters**

10. I recommend that guidance be given to ECOs. The following should be inserted into the DSPs and sent as a telegram/ ACEIP:

- The list of family members should be reiterated and ECOs should be reminded to check it in cases of doubt.
- ECOs should be reminded that in the absence of proof that the applicant is not related to the family member in the UK that a right of appeal must be accorded. The ECO is free to

raise this as an issue in the refusal where he or she believes that the applicant is not related as claimed.

- ECOs should be reminded that there is no requirement that a family member be settled or have leave to remain in the UK. Any family member present in the UK qualifies the applicant for a family visit appeal. If the ECO does not believe that the family member is present in the UK then he or she is free to raise this as an issue in the refusal.
- That a right of appeal be accorded to all those visitors who designate their visit as a family visit to a qualifying family member on the VAF form or at interview, and also to all applicants who will be staying with a qualifying family member. The right of appeal in the case of dual purpose visits may only be denied where the family visit aspect is merely incidental.
- That in relation to students the length of course, for the purpose of appeal entitlement, is precisely that and not the length of a module. The length of the course should be given in the letter from the educational institution **(42)**

### **Streamlined Decision Making**

11. I recommend that the ECO training notes are amended in relation to the instruction: “ DO quote more than one reason for refusal. If only one reason is quoted this suggests the decision is weak and could succumb to pressure to have it overturned.” In the sample I monitored I repeatedly saw weak, improper and irrelevant reasons added to perfectly good ones. Where there is only one proper reason for refusal this should stand alone. **(47)**

### **Grounds of Refusal: Intention to Leave the UK and Abide by the Conditions of Leave**

12. I recommend that ‘young single male’ is not used as a basis for refusal and that ECOs be made aware that it is not a ‘profile’ for refusal in any sense. **(49)**

13. Two grounds of refusal which immediately appear to be 'Catch 22' criteria are that the applicant knows no one in the UK and has not travelled before. I recommend that these criteria should not be used. **(50)**

14. I believe there is a possibility of genuine misunderstanding of forms in relation to previous visa refusals and recommend that any applicant who volunteers the correct information at interview should not be held to have misled anyone if the form was incorrect. **(51)**

15. I recommend that unless an ECO makes detailed enquiries regarding a previous visa refusal by another country it should not be placed in the balance against an applicant. I recommend that there is no proper basis for saying that applicants requiring two or more visas must obtain these in any particular order except in transit visa applications, and this should not be a basis for refusal in relation to "normal" visit visas. **(51)**

16. I recommend that a decision be made in relation to the statement on refusals that the decision does not prejudice future applications: either the statement on the refusal remains and ECOs make their decisions without reference to previous refusals whatsoever and preferably in ignorance of their existence, or it is removed and explained to applicants that a previous refusal is prejudicial: not a prohibition but a negative factor which must be overcome in the new application. **(52)**

17. I recommend that it is not lawful to refuse a visa application on the basis that the applicant is associated with someone who has lawfully varied their leave, further I recommend that where someone associated with the applicant has remained unlawfully that this can only be a basis for refusal if the ECO can point to a reason as to why the applicant might do the same. **(53)**

18. I recommend that grounds of refusal based on the general economic situation in a country should not be used. **(54)**

19. I recommend that it is clarified with ECOs that remaining within a period of leave granted and extending/ varying within the rules in the UK are perfectly acceptable activities complying with immigration control and should not be used as a basis for refusal. **(55)**

20. I recommend that there should be no enquiry into tourist itineraries by ECOs unless the applicant is going to visit as an independent traveller who knows no one in the UK – and then the appropriate questioning might be as

follows. Have you already organised a schedule for your trip? If not, how will you do this? It should be accepted that the detailed planning might be done after obtaining a visa. I also recommend that it should not be a negative factor that tickets and hotels have not yet been booked. **(58)**

21. I recommend that ECOs only use lacking credibility as a basis for refusal in accordance with the dictionary definition of the word “incredible”, to indicate where the plans are beyond belief, in the sense of being absurd, or where there is tangible evidence to say that the applicant is not trustworthy. **(60)**

22. I recommend that value or moral judgements do not form the basis of refusals, and note that Dame Elizabeth Anson took a similar view in her 2000 report. **(61)**

23. I recommend that greater care be taken in relation to factual assertions in refusal notices, ensuring that findings of fact reflect what is said at interview, in the documents or in the form. **(62)**

24. In relation to medical visits I recommend that ECOs should not expect medical visitors to be able to explain their medical conditions or those of their children, further refusals should not be made on the basis that treatment is available in the country of origin or on the basis that the applicant does not know the precise length of treatment. **(63)**

25. I urge great caution in ECOs becoming experts, particularly in business matters. If an ECO does have technical expertise that (s)he applies in this way (s)he must say how (s)he is expert. I recommend that generally that this is not done however. **(64)**

26. It is my opinion that it is not possible to put a value on trips to family members, friends or indeed tourism and so such trips ought not to be said to incommensurate with the cost. I also believe there is no empirical evidence for saying that those who spend more on a visit, in relation to their overall financial position, are more likely to breach controls or overstay than those who spend a lesser amount. I recommend that refusals are not made on the basis that they are not commensurate with the cost in these cases. **(66)**

27. Business trips undoubtedly do have an element of balancing costs against benefits but this cannot be sensibly evaluated in an ad hoc fashion in a very brief interview. I recommend that either this basis for refusal is dropped or that it is turned into a requirement for a written document from the business. **(67)**

28. Students studies are held to be non-commensurate with the cost on a frequent basis. I recommend that this basis for refusal should not be used in relation to students. **(68)**

29. Studies and visits are often held to be disproportionate / non-commensurate with the social, economic and personal circumstances of the applicant. I recommend that consideration be given to this issue. The Government should decide whether it is happy with this basis of refusal. If it potentially wishes to continue to refuse on this basis I recommend that research is done to establish whether it is empirically sound, and that such refusals are worded in plain English if they continue to be used. **(70)**

30. I recommend that ECOs should be advised that it is perfectly reasonable for those who do not speak English fluently to study English in the UK even if it is more expensive, even if no previous English studies have been undertaken, even if it is not in a tangible sense needed and even if previous studies in the applicant's home country have been ineffective. I also recommend that ECOs be advised that it is not grounds for suspicion that applicants want to attend a college in the UK for other courses even if that course is available in their country of origin. **(72)**

### **Grounds of Refusal: Forgery**

31. Forgery is a major problem for ECOs. I recommend that good practice is the recording of evidence on the file to support any allegation of a document not being genuine. Where there is no specific evidence that the particular document is a forgery and general matters are relied upon (for instance the colour of the ink or format of a document) this ought to be put to the applicant for comment at an interview. **(73)**

### **Grounds of Refusal: Insufficient Funds**

32. I believe that applicants would benefit from a more systematic approach to financial assessment. I recommend that the issue be approached as follows: firstly an assessment is made as to how much money the applicant needs for their trip – I recommend that standard amounts be used for students as recommended by the British Council and for visitors who are not booked on to a pre-paid tour that a minimum amount be set using guides such as “Lonely Planet” and the “Rough Guide” which currently both agree a minimum amount of £30 a day for those who have to purchase accommodation and support themselves. I suggest a minimum of £5 a day for those who will be provided with accommodation and food by friends/ relatives. Secondly I recommend

that the ECO assess whether such amount exists on the face of the documents presented, or whether they are otherwise satisfied that the applicant has such an amount available to them in any case. It may not always be necessary for documentary proof to be presented. Thirdly the ECO should assess whether there is any reason on the balance of probabilities to disbelieve the documents/ information presented by the applicant. (75)

### **Grounds of Refusal: Issues of Confidentiality, Race Discrimination, Compassionate Cases and Breaches of the European Convention on Human Rights**

33. I recommend that ECOs be reminded of the very important rights that occasionally arise in relation to this type of work. (76)

34. In relation to confidentiality I simply remind ECOs of their training and DSP guidance in relation to asylum seekers: it is unnecessary and unacceptable to refer to the fact that someone in the UK is claiming asylum as this breaches a very important principle of confidentiality. (77)

35. I believe that it would be instructive for ECOs and ECMs to be provided with examples of the applicability of the Race Relations Act to the granting of visit and student visas as it is conceptually complicated. (78)

36. I would recommend that the Human Rights Act training notes give a list of positive examples of occasions when a visa should be granted so that UK does not breach its international obligations under the European Convention on Human Rights (ECHR). In particular there should be material demonstrating the relevance of articles 2,3 and 6 ECHR to permitting visa applicants attend trials in the UK. (82)

### **A New Formula for Substantive Decision Making**

37. I recommend that the whole basis on which refusals are made should be reviewed. There has been a very thorough review of the procedural aspects of non-settlement visa applications which overall has been of positive benefit to the applicants. It is now time that the substantive decision-making is subjected to a rigorous review. I am conscious that any plan of decision-making would need to fit within the 10 minutes an ECO has for such matters. I suggest a new format for decision making might be as follows:

- The ECO should review the form and documents to see whether it is a straightforward grant. If so a grant is made.
- The ECO should carry out any forgery checks which are indicated by the documentation – comprehensible notes should be made of any checks, and the positive or negative outcomes. If documentation is found to be forged the application should be refused on this basis without further consideration, on the basis that the application lacks credibility. Forgery needs to be clamped down upon firmly: it wastes large amounts of time and money for posts and involves the exploitation of applicants by the criminal elements who produce the forgeries. I also recommend that a clear warning to this effect be placed on the visa application forms.
- The ECO should make an evaluation of the money required for the visit/studies and whether this is available on the face of the application. If sufficient funds do not exist the matter should be refused on this basis. If there are sufficient funds apparently available but the ECO believes that the money is not truly available to the applicant then the application should be refused on this basis. Care should be taken that this last matter is considered on the balance of probabilities.
- The ECO should consider whether the applicant intends, on the balance of probabilities, to leave the UK at the end of the visit or studies and whether they will comply with the terms of their grant. I have indicated problems with the current criteria which are used in relation to this issue. I urge however that whatever concerns ECOs have, a very minimum requirement of fairness is that these concerns are explicitly put to the applicants. I suggest that a way to achieve the type of focused interviews that are needed to make a decision within 10 minutes would be for ECOs to formulate their concerns on the basis of the application form and documents, and then to put these to the applicant. At present ECOs collect information through the interviews but do not generally put their concerns to the applicant for comment. My most major criticism of the decisions I have reviewed is that the reasons for refusal are not put to applicant for comment prior to a decision being made. I found this was not done in more than half of cases – although it is something ECOs are instructed to do by DSP 8.15. I recommend that this is done because it

will provide a framework for focused interviews: in the majority of interviews I would expect simply the refusal issues to be put and replies recorded and considered. In addition to making interviews quicker, this approach would make the process more transparent and fair. Applicants would understand the ECOs concerns and get the opportunity to have their say before any refusal is made, whereas at present they can only comment after the event of the refusal.

- I recommend that research is commissioned into the issues that are pertinent to applicants overstaying or breaching conditions so that questioning can focus on relevant issues. At present there is no data on who returns, particularly as departure controls do not exist. I understand that new technology may enable them to be re-instituted and provide useful information. I do not think that ad hoc reporting back to post requirements, operating for instance in Accra where some 'high risk' visa applicants are granted visas but asked to report back to the post on return to Ghana, are useful in providing information. Some applicants will forget or not bother to report back and the data will be incomplete. **(84)**

## **Quality Control of Decision Making**

### **Quality Control via the Provision of Advice**

38. I recommend that leaflets be kept regularly up-dated and made freely available at posts. Out of date leaflets should be thrown away. **(86)**

39. I recommend that UKvisas ought to consider the issue of documentation carefully and attempt to enforce consistency across the system, except where difference is justified. **(88)**

40. The British Council provide valuable information to foreign students through a variety of media: one-to-one counselling, booklets and a website. They have suggested that it should be possible to download a copy of their guide to entry clearance for international students from the UKvisas website with the VAF 1 form, and this seems an excellent suggestion which I recommend be followed up. **(89)**

41. I commend the Immigration Advisory Service project set up in Sylet, Bangladesh in July 2000 to provide advice to visa applicants. IAS are considering expand their advice service to Pakistan, India, Sri Lanka, Nigeria, Ghana, Afghanistan and Iraq. I recommend that IAS be given all possible support in developing these projects abroad. **(90)**

### **Quality Control using Adjudicator Determinations**

42. I recommend that ECMs read all Adjudicator determinations to deduce patterns of error in refusal reasoning and to improve the quality of decision-making in refusals which do not have the right of appeal, as well as those which benefit from such a right. **(94)**

43. I recommend that the Immigration Appellate Authority keep statistics on appeals allowed and dismissed by post. A post which lost a high percentage of appeals ought to be subject to investigation by UKvisas as I believe this would be an indication of poor decision-making. When a statistically relevant sample is available investigations should commence into the quality of decision-making at posts which lose a high percentage of appeals. I believe that an appropriate marker for investigation would be where a post has more than 24% of its decisions successfully appealed. **(95)**

### **Quality Control: the Customer Satisfaction Survey**

44. I recommend that another survey is carried out, as the Best Practice Guide to Entry Clearance Work indicated would in any case happen, with greater efforts made to obtain a higher response rate and information from all posts. **(98)**

### **Familiarisation Trips to Dusseldorf, Harare and Nairobi**

45. I recommend that further consideration be given to identifying an intercom system that might prove reliable and easy to use, to avoid staff and applicants having to constantly raise their voices. **(102)**

46. I recommend that ECOs are provided with compulsory touch-typing training to provide them with the necessary keyboard skills to keep up with increasing numbers of applicants. **(103)**

47. I recommend that all posts provide a copy of the JCWI (Joint Council for the Welfare of Immigrants) Immigration, Nationality and Refugee Law Handbook to all ECOs and telephone advice staff. This is a publication which I believe would be appropriate as it is cheap, comprehensive and designed for use by immigration advisers without a formal legal training. There should also be a copy of a comprehensive immigration legal textbook, such as McDonald's Immigration Law & Practice by Ian A McDonald QC and Francis Webber published by Butterworths, per visa issuing post. **(104)**

48. I recommend that the DSPs be amended simultaneously with the sending out of telegrams amending law and practice. **(105)**

49. I recommend that UKvisas views ensure an exchange of information and statistical data (in particular post by post refusal rates for students) with the British Council which is working to targets to increase student numbers, and also has the ability to influence the quality and timing of applications. **(107)**

50. I make recommendations that require time and resources to be given to refugee family applicants (see Annex A) who pay no or reduced fees and whose applications can become time consuming, particularly if other departments, especially Immigration & Nationality Department (IND), do not respond promptly. I recommend that it would be appropriate for the additional costs of family reunion for those with full or subsidiary refugee status, required so that the UK meets its obligations in international law, are met by IND rather than by applicants for student and visit visas. **(109)**

53. I recommend that the training and monitoring of ECMs be a priority for UKvisas, and that ECMs be brought together on a more frequently to formulate uniform practice and understanding of the law. I understand that ECMs do meet on an approximately six monthly basis. These meetings should provide a forum for further legal training and harmonisation of practice. **(111)**