

Completed explanatory memorandum with recommended refusal wordings.

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Front Sheet Part 1

Post reference: / dd/mm/yyyy

APPEAL: NATIONALITY, IMMIGRATION & ASYLUM ACT 2002

PART 1

Appellant Name:

Date of Birth:

Citizen of:

UK Sponsor Details:

Name:

Address:

Type of Entry Clearance:

Application made on:

Date of decision:

Refused under Paragraph:

Overseas Post:

Interview Details:

Date of Interview:

Those in Attendance:

Language:

Applicant confirmed fit, well

and ready to be interviewed:

PART 2

The Appendices:

- a. Visa application form
- b. Letter of sponsorship
- c. Enrolment letter (if appropriate)
- d. Bank statement from sponsor
- e. Record of interview (typed)
- f. Refusal form (e.g. GV51(FRA))
- g. Notice of appeal Form AIT-2
- h. List here all documents submitted with appeal (You should also note here any documents listed as being included with the AIT2 but not enclosed.)
- i. List here all documents seen but not appended.

Part 3 - ECM Review

First Paragraphs to be used in all cases

Notice of appeal was received directly at Post/from the AIT on (date). I have reviewed the application in light of the grounds of appeal (and further supporting documentation) but I am not prepared to overturn the decision to refuse the application.

If additional evidence submitted addresses some of your concerns and you are willing to concede one or more points, you must say so. ie "I have reviewed the application in the light of the grounds of appeal and the additional evidence submitted. Having looked at the (state what new evidence seen ie bank statements) I am now prepared to concede (eg M&A, finance) but am not prepared to concede the other concerns raised in the notice of decision to refuse".

You should also add here if appropriate; " You stated on your appeal that you had enclosed (name of document/s) but this/these were not included in the appeal documentation received."

You must also make it clear in your statement exactly what documentation you have considered in reaching your decision. E.g. if appellant has submitted 10 bank statements you must say you have considered the 10 bank statements submitted but

ADD HERE: Expanded reasons for reaching your decision. Some suggested paragraphs are below:

- a. Cases where generic Grounds of Appeal are cited:

- The Grounds of Appeal claim that the decision made by the ECO is not in accordance with the law. However, there are no reasons whatsoever cited in support of this assertion. Therefore, I have been unable to analyse why the appellant considers the decision was not in accordance with the law. Nevertheless, I have carefully reviewed the decision and supporting evidence available to me and I am satisfied that the decision is in accordance with the law contrary to the appellant's unsubstantiated assertions.
- The Grounds of Appeal claim that the decision made by the ECO is not in accordance with the Immigration Rules. No specific reasons have been provided to explain why the appellant considers this to be the case. Having carefully reviewed the decision and supporting evidence available to me, I am satisfied that the ECO applied the correct provisions of the Immigration Rules and that there is no basis for the assertion that the decision is not in accordance with those Rules.
- The Grounds of Appeal assert that discretion ought to have been exercised differently. This in itself appears to imply that that appellant cannot meet the requirements of the relevant rule as reliance is being placed on the exercise of discretion. In any event there is no explanation as to why the appellant believes that discretion ought to have been exercised differently. In the absence of further evidence I have carefully reviewed the decision and supporting evidence available to me and I am satisfied that the decision is correct. I am not prepared to exercise my discretion in the appellant's favour.

For use in all the above cases:

The appellant has failed to comply with the requirement of the Procedural Rules, specifically Rule 8(1)(c). In this respect I ask the Tribunal to deal with this appeal without a hearing and dismiss it.

b. Grounds to follow...?

I note that the grounds of appeal submitted simply states, 'Grounds to follow'. Given that no further details have been provided I cannot comment on the merits or otherwise of this appeal. The appellant has failed to provide detailed grounds within the statutory limits. I respectfully request that the appeal is dismissed and that leave to submit further grounds post-dating the current grounds of appeal is refused. The Tribunal is asked to give no weight to any post-decision documents adduced as evidence when considering the merits of the appeal.

The appellant has failed to comply with the requirement of the Procedural Rules, specifically Rule 8(1)(c). In this respect I ask the Tribunal to deal with this appeal without a hearing and dismiss it.

c. Additional documents

I have reviewed the decision in the light of the grounds of appeal and note that no new evidence has been submitted in support of the appeal or to

address the issues raised in the notice of refusal. The appellant has submitted documents that were available at the time of the decision which do not detract from the points raised in refusal and as such I cannot place any weight on these documents in conducting this review.

If either Human Rights or Race Discrimination are alleged:

d. Human Rights

I also note that as part of the grounds of appeal the appellant has claimed that this decision has breached his/her right to family life. I note that no new evidence has been provided. On this basis I am satisfied that as an...

(Include here the relationship) family life does not exist and Article 8(1) is not engaged. However, if I am wrong about that, I have considered the following factors (list) and believe that refusal is proportionate and appropriate.

Alternative: [if you are satisfied family life does exist but for the following reasons (list)] I am satisfied that the decision is proportionate and appropriate.

Alternative: I have been provided with (list documents provided) and have concluded that (list) satisfies me to the appropriate standard that Article 8(1) is engaged. However, I remain satisfied because (list reasons) that the decision is proportionate and appropriate.

e. Race discrimination

The appellant has alleged that the refusal of his application to enter the UK as (WHM, visitor, student) breaches S19 (b) of the Race Relations Act 1976 and the duty it places on a public authority. These are allegations this Embassy/High Commission takes very seriously.

As with all immigration appeals, the burden of proof is on the appellant. The appellant has provided no evidence to show how he believes the Race Relations Act has been breached. Nevertheless, I reviewed the decision in the light of the grounds of appeal, with particular reference to the obligations placed on me by that Act in so far as it relates to S84 (1)(b) of the Nationality, Immigration and Asylum Act 2002. I can find no reason to suggest that the decision is not in accordance with the law.'

Entry Clearance Manager:

Date:

Part 4 - Explanatory Statement

a. General Paragraphs

1. If appropriate, when applications are considered on the papers only. Applicants are made aware that their applications will be considered 'on papers' by posters outside the Embassy/High Commission, the Embassy/High Commission web site, information leaflets and press releases. Therefore this application has been assessed by an Entry Clearance Officer (ECO) solely on the information provided on the application form and documents submitted in support of the application.

2. On (date) ECO (name) assessed the application for entry clearance as a (category). In support of his/her application the appellant produced the documents listed above. The ECO considered that the appellant had failed to satisfy all of the requirements of paragraph (xxx) of the Immigration Rules HC395 for the reasons set out in the attached notice of refusal. The appellant was served with the notice of refusal and Appeal form AIT-2 by post on (date). If a commercial partner is serving the notice of refusal they must record the date of collection or the date of posting from their offices and inform the Post of this date (eg by spreadsheet). Post must update CRS with the date of service. It is a legal requirement that date of service is recorded.

****OR****

3. The appellant was interviewed by ECO (name) on (date) in connection with his/her(category) application and a copy of the interview record is included in the bundle. In support of his/her application the appellant produced the documents listed above. The ECO considered that the appellant had failed to satisfy all of the requirements of paragraph (xxx) of the Immigration Rules HC395 for the reasons set out in the attached notice of refusal. The appellant was served with the refusal notice and Appeal form AIT-2 by hand/post (method of service must be clear) on (date). If a commercial partner is serving the notice of refusal they must record the date of collection or the date of posting from their offices and inform the Post of this date (eg by spreadsheet). Post must update CRS with the date of service. It is a legal requirement that date of service is recorded.

Only for use in Post where there is an arrest programme. “Applicants are advised that the submission of forged documents may result in their application being refused and may also result in prosecution by local police and/or CID. They are required to sign a declaration to acknowledge this.” The appellant was also refused under para 320 (XX) of the Immigration Rules.

ADD HERE: Expanded reasons for reaching your decision. Some suggested paragraphs are listed below:

b. Student specific paragraphs

The standard of English in the appeal documents bears no resemblance to that demonstrated at interview. If the appellant could not understand basic questions in English after having been given ample opportunity I cannot accept that his skills have improved to such an extent within the time limits for lodging this appeal. [Refer to specific extracts of the interview record]. The grounds of appeal are in a format and style regularly seen at this Embassy/High Commission. Therefore, I am not satisfied that they have actually been written by the appellant as claimed.

The grounds of appeal assert that the appellant does have the necessary English language skills to follow the course and alludes to the fact that the College offers a language course prior to commencement of the main course of study. However, the grounds do not properly address the concerns raised by the ECO regarding language abilities. The refusal refers to the appellant’s IELTS score, concluding that this did not demonstrate the appellant has reached the standard of English sufficient to follow

the course. I note that the IELTS system represents an objective assessment of abilities in English and as such can be relied upon as evidence of the appellant's current skills without an interview. Having reviewed the decision, I also consider that the appellant does not have the necessary language skills, based on the IELTS score achieved, to embark upon a course in [subject]. This is because the course would not only involve common English language constructions but also require understanding of complex terminology essential to basic studies in this field.

The grounds of appeal assert that the appellant does have the necessary English language skills to follow the course and alludes to the fact that the College offers a language course prior to commencement of the main course of study. However, the grounds do not properly address why the appellant was unable to answer the most basic of questions in English during interview. In fact, the interview record demonstrates that the appellant's ability to converse in English was so poor that the interview had to be completed in (give language) with the assistance of an interpreter. [Refer to specifics of the interview record here]. I cannot accept that the appellant has been able to improve to such an extent since the date of interview to reach an adequate level to demonstrate that he/she can undertake the course.

Interviewees guichets in (Post) are not troubled by excessive noise from the public area, and while the appellant may have claimed he was nervous, there was no reasonable explanation as to why the appellant was unable to understand and answer basic questions correctly were he as proficient in English as he claimed. The appellant was given ample opportunity to overcome nervousness as questions were repeated several times. [Refer to specifics here]. Having noted the grounds of appeal I am satisfied that the ECO, who had the benefit of speaking to the appellant in person, acted reasonably when deciding he was not satisfied the appellant was able to follow the proposed course. The onus is on the appellant to demonstrate that he/she has the ability to undertake the course and in this case the appellant has failed to discharge that burden to the relevant standard.

Given the reasonable doubts over whether the appellant was able to take the course, it was also reasonable that the ECO was not satisfied the appellant intended to follow the proposed course. That the appellant should be undertaking a course in further education in a foreign country, without any demonstrable attempt to learn the language of that country, undermines the credibility of that person's intention to follow the course. The grounds of appeal fail to properly address this point.

In the grounds of appeal submitted, the appellant has not offered additional information to explain his lack of knowledge concerning his intended college and its academic facilities or his proposed course, its organisation, structure or its content and the qualification available at its conclusion. The appellant has offered no evidence or explanation for his lack of research into alternative colleges and courses in order that he could make an informed decision regarding his studies or invested any time or effort in planning his future education. The appellant has failed to explain his inability to say how the course would benefit him or enhance his prospects either in his career or financially. This lack of knowledge displayed by the appellant lead to a refusal on his/her intentions and given that these concerns have not been properly addressed I can see no reason to overturn this aspect of the decision.

The appellant has offered no additional information or evidence with the grounds of appeal to allay the concern that the cost/ burden of his proposed studies is incompatible with the financial circumstances of his sponsor / that sufficient funding will not be available to him to cover the period of intended studies in the UK. Whilst evidence of the sponsor's funds has been supplied, no information has been disclosed as to the sponsor's other financial commitments. The ECO was not satisfied that these funds are actually available to the appellant. In the absence of any further documentary evidence, I consider that the grounds of appeal have not demonstrated to the required standard that the conclusions reached as to maintenance were incorrect.

In the grounds of appeal the appellant has argued that he chose to study in the United Kingdom because of the UK's international reputation in providing world class education. The ECO took into account the Prime Minister's initiative with regard to attracting students to the United Kingdom. However, the ECO also noted that the cost of a comparable course in the region was significantly cheaper than one in the UK. The appellant proposed to return to the same/similar employment/had no idea of his future employment. I am satisfied the ECO was correct to consider the additional cost of a course in the United Kingdom and weigh this against the declared benefits such a course would bring in his/her assessment of the appellant's intentions. I am satisfied that the ECO's conclusion that the appellant failed to demonstrate he intended to follow the course was justified in this particular case and there is nothing in the grounds that persuades me to alter this decision.

Only for courses below degree level:

The appellant's circumstances in (name country) appeared to offer little to encourage him/ her to return after his / her studies as he / she claimed he / she would. The ECO was therefore not satisfied that he / she intended to leave the UK at the end of his / her studies. In light of the foregoing, I am therefore not satisfied that the appellant intends to follow the proposed course in the United Kingdom, his/her circumstances are as claimed or that he/she can be maintained and accommodated in the United Kingdom without unauthorised employment or recourse to public funds, and I am not persuaded to alter the original decision.

c. Working Holidaymakers

The grounds of appeal refer to the fact that the appellant has been offered full time employment for 12 months and it is contended that he/she meets the requirements of Paragraph 95 because he will work for this period and then engage in tourism thereafter. The ECO was not satisfied that the appellant would undertake work as incidental to the holiday. Having carefully considered the decision in light of the grounds of appeal I agree with the ECO's assessment in this case. (I do not accept that full time work for 12 months can meet the requirements of Paragraph 95 (vi) because work must be incidental to the holiday and in any event not be for more than 12 months. I would submit that full time work for 12 months does not fall within the definition of incidental to the holiday. On the appellant's own evidence he/she does not meet the requirements of the rule.

d. Concluding general paragraph

The appellant was advised in extensive publicity from this Embassy/High Commission of the required documents needed in order for his application to be

assessed. The documents he provided are listed at Annex XX. Following the refusal of the application, the refusal notice advised the appellant to submit any additional evidence he may have in order that the concerns mentioned in the notice could be properly addressed by this office. A list of documents so provided is at Annex YY.

On the basis of this, and in the light of DR* 38 (Morocco) 2005 respectfully request that any additional evidence submitted by the appellant at appeal is not taken into consideration. Any evidence can be used to support a fresh application, and this is the proper course for such information.

e. Local Conditions: suggested paragraphs

In considering the application, I/the ECO took into account local conditions in (name country). The average annual per capita income is only (local currency figure) (conversion and exchange rate) as opposed to \$28,350 (£15,750; £1312.50 per month) in the UK (example of independent source, World Development Indicators Database, April 2005- World Bank).

For those in employment, some comparative incomes are:

Low income (local currency) per month) - e.g. (examples of employment in this pay bracket) house staff, seamstress, mechanic, shop assistant, hairdresser & petty trader; the vast majority of the population falls into this category.

Middle income (as above) per month) - e.g. teachers, nurses, clerical workers & civil servants.

High income (local currency) per month) - e.g. lawyers, doctors, high ranking government/bank officials.

NB. These are average income figures and can vary dependant upon employer (ie local employer compared with international/expatriate employer).

According to the NUS Press Pack 2004-2005 (Higher Education Student Finance) the average estimated expenditure for students resident in the UK and living outside of London is £8,584 including tuition fees at a maximum of £1,150 for the academic year 2004/2005. London, as the capital city is recognised as having the highest cost of living in the UK. The British Council also states that students wishing to study in the UK (but not including London) should allow themselves approximately £6,000 p.a. for maintenance and accommodation, in addition to the course fees. ("These figures are based on 2002 prices" Studying and living in the United Kingdom 2004-05, British Council) The appellant was unmarried with no children, working as a.../ studying. / The appellant was married with XXXX children and not working/ working as a... The appellant / sponsor was proposing to spend £XXXX on his/her/ the appellant's studies. Realistically, even with a UK qualification, the appellant was only likely to achieve a salary in (name country) of less than (give amount) per annum in the medium term. This kind of sum could make a positive difference to the appellant's standard of living in (name country). To enter into this expenditure seemed entirely disproportionate in the light of the appellant's situation / particularly when the same course was available in (name country). The appellant's bank statement / The financial sponsor's bank statement showed a balance of XXXX and in the context of the evidence submitted, average wages in country as evidenced above and the Gross National Income (GNI) the ECO was not satisfied that this amount was genuinely

available for the appellant's studies. I considered that the appellant was well aware of the opportunities abroad and was not satisfied that the appellant had not enrolled on his/her course purely as a means of travelling to the United Kingdom. I was therefore not satisfied that it was the appellant's genuine intention of following the proposed course in the United Kingdom and considered that the destination of the course was of paramount importance.

The appellant stated that his/her sponsor would meet the costs of his/her studies in the United Kingdom and presented a bank statement as evidence of the funds available. The bank was contacted regarding the veracity of the bank statement presented by the appellant. The bank confirmed that the statement was genuine. I have reviewed the decision in the light of the grounds of appeal. I note that the bank statement has been presented to the British Embassy/High Commission recently to support several other visa applications. No evidence of the sponsor's/company's business, income or commitments was presented and I am not satisfied that one person/ business can genuinely make funds available to so many people to cover the costs of their holidays and/ studies in the United Kingdom. I am therefore not satisfied that this sponsorship is genuine and has not been offered for the purposes of the visa application alone and that the claimed funds would genuinely be made available to the appellant in the United Kingdom. The appellant has provided no evidence of any other available funds. The appellant presented a bank statement in the name of (name) Ltd. Where a company is a limited company, even a director cannot remove money for his own personal use. Most Ltd companies will have several directors and shareholders and in order for the director to withdraw money from the account s/he should have their permission. The appellant failed to submit any documentary evidence to show that the alleged director actually was as claimed or that the money in the account was at his/her personal disposal. (delete as appropriate)

This statement will be copied to the appellant or his representative. If they have any comments these will be addressed to the adjudicator.

Entry Clearance Officer

Date: