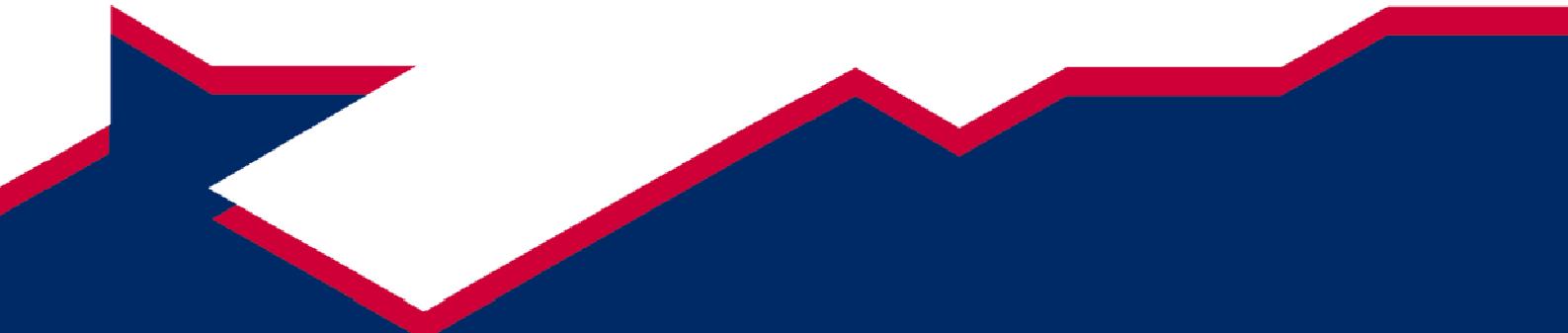




THE UK BORDER AGENCY RESPONSE TO THE INDEPENDENT CHIEF INSPECTOR'S REPORT: A SHORT- NOTICE INSPECTION OF DECISION MAKING QUALITY IN THE ISTANBUL VISA SECTION



The UK Border Agency thanks the Independent Chief Inspector (ICI) for advance sight of his report and is pleased to note the positive comments in the report, in particular that the refusal notices issued from the Istanbul visa section were among the best that the ICI has encountered. The positive findings on the initiatives in place to enhance service quality are also welcomed. Many of the issues highlighted in this report were already known to the UK Border Agency and work was in hand to address them at the time of the inspection.

The UK Border Agency response to the Independent Chief Inspector's recommendations:

- 1. Ensures Entry Clearance Officers are not imposing additional evidential requirements for certain applicants where applicants are not informed of the nature of these requirements prior to application and are not given any opportunity to meet these requirements during the decision making process:** The UK Border Agency notes this recommendation and agrees with the principle of providing clear information and guidance to applicants. However, the UK Border Agency operates in 136 locations around the world, considering applications from all non-EEA nationalities across a broad range of visa categories. This range of categories, and the diverse circumstances of applicants in different geographical locations, means that it is not practical to issue detailed guidance covering every category of visa application.
- 1.1 Following a number of previous recommendations from the ICI, the UK Border Agency developed category specific supporting document guidance for the majority of the visa application categories in October 2010, covering all of the most common routes. This guidance is included on the recently updated Visa Services website and is available to applicants through our commercial partners. Whilst this standardised guidance was produced to help applicants in selecting the documents that an Entry Clearance Officer (ECO) might find helpful to see with applications, non-PBS applications are not decided on the basis of the production and verification of prescribed documents. The new guidance states that "*it is not a list of documents that you must submit. We do not expect you to provide all of the documents listed below, it is for you to decide which documents are most relevant to your application*" and that "*The submission of all or any of these documents does not guarantee that your application will be successful.*" The onus is on the applicant to satisfy an ECO that they meet the requirements of the Immigration Rules and decisions are made on 'the balance of probabilities' - the legal standard. The UK Border Agency operates in 136 locations around the world and offers over 70 different types of visa to non-PBS applicants. The Agency's client base is extremely diverse and it would not be practical to insist on the same documentation from every applicant in every location.
- 1.2 The UK Border Agency accepts that there were deficiencies in the way that evidence was presented as a reason for refusal in a small number of refusal notices sampled by the ICI, but is satisfied that the decision to refuse was correct in all but two cases. Five refusal notices have subsequently been reworded in order to better reflect the circumstances and evidence supplied with the particular case. The supporting documentation guidance was amended in February 2011 to cover points highlighted by the ICI. The UK Border Agency will issue guidance to all posts by the end of April, to remind ECOs that non-PBS applications should not be refused solely for failure to provide specific documents.

1.3 Paragraph 320 (8A) of the Immigration Rules empowers an ECO to request any additional information or documents that will assist them in deciding an application, but they will normally make decisions based upon: the application form and information contained within it, biometric data and the original documentation submitted by the applicant. Applicants are very rarely interviewed. This is clearly signposted to applicants throughout the application process – on the application form and through the supporting documents guidance on the UK Border Agency website. Applications are not routinely deferred to enable applicants to produce additional documents, unless a decision cannot otherwise be reached. The onus is on the applicant to satisfy the ECO that they qualify for entry under the Immigration Rules, and to ensure that they have prepared the application properly before lodging it.

2. Ensures guidance is followed regarding the retention of key supporting documents pertinent to the decision made: The UK Border Agency accepts this recommendation.

2.1 An operational instruction was issued on 21st January 2011 to all entry clearance staff clarifying the policy on retaining supporting documents relevant to entry clearance decisions. ECOs and Entry Clearance Manager (ECMs) were reminded that they should ensure that only documents specifically required are retained, and that this should include copies of supporting documents that are directly relevant to the decision and documents addressed to the visa section. Where it is not possible to retain all such documents (for reasons such as a lack of secure storage space) they should be clearly referenced in issue notes/refusal notices. Staff were also reminded of the importance of ECOs evidencing their decision making for other audit purposes. Staff in Istanbul are aware of this guidance and follow it. Adherence to this guidance will be measured through regular ECM reviews of decisions.

3. Improves the effectiveness of Entry Clearance Manager reviews of decisions and considers the impact of current targets on the quality of reviews undertaken: The UK Border Agency accepts this recommendation.

3.1 Following a recommendation made by the former Independent Monitor Independent Monitor of Entry Clearance Refusals Without the Right of Appeal in 2007, the UK Border Agency agreed to move from the universal ECM Review of all entry clearance decisions to a targeted approach. In May 2010 guidance on ECM review was further updated and now incorporates similar methodology to that used by the ICI when reviewing cases. Although there are minimum levels in place for certain case types, ECM reviews are targeted towards cases in categories where there are indications that decision quality is not good enough. All applications refused under paragraphs 320 (7A) and (7B) are required to be reviewed by an ECM. ECMs must complete reviews of all decisions for any new, inexperienced or underperforming staff until the ECM is satisfied that the ECO is consistently making good decisions.

3.2 The ICI's report 'A Thematic Inspection of the Points-Based System: Tier 2 (Skilled Workers)' included a recommendation that the UK Border Agency "set a minimum figure of PBS cases to be reviewed by managers in line with other limited rights of appeal cases and implements a consistent formal quality assurance framework within overseas posts...". The UK Border Agency accepted this recommendation and agreed to consider whether the quality assurance frameworks for overseas and in-country caseworkers can

be more closely aligned. The UK Border Agency will widen the scope of this work to include the current operation of ECM Review of visa decisions, which is underway.

4. Ensures there is a clear understanding amongst entry clearance staff at all levels about the performance targets Entry Clearance Officers are expected to meet: The UK Border Agency accepts this recommendation.

- 4.1 Following two recommendations made by the ICI, the UK Border Agency issued guidance to all posts on the setting of ECO productivity benchmarks in January 2011. This included a list of factors to be taken into account for those who set productivity targets. The guidance stressed the need to consult ECO when benchmarks are set and stated "*discuss...average ECO productivity rates for each category with ECOs. They are closest to the action and in the best position to provide information on what's possible in their work. Involve them in setting targets - it important that staff feel a sense of ownership in the process. During these discussions try to ensure that the rationale for benchmarks clear to all staff*". ECMS in Istanbul have discussed this guidance with all ECOs and have now implemented it.
- 4.2 The UK Border Agency understands that this recommendation refers to the perceived "distinction in the views of ECOs and ECMS in respect of the level of applications which could be processed by ECOs in a single day". The UK Border agency does not agree that all staff involved in entry clearance work need to understand ECO performance targets. It is only appropriate for staff at ECO grade and above.

The UK Border Agency offers the following comments on other observations made in the report for further clarification.

Paragraph 5.17 concerns “the application of additional evidential requirements”.

- “applicants to demonstrate the origin of funds in a bank account where a bank letter outlining the account funds had been submitted. The latest guidance to applicants regarding supporting documentation (category-specific checklists for supporting evidence, introduced on 20 September 2010), advises that bank letters confirming the current balance are acceptable evidential formats in order to demonstrate funds”

Guidance has been clarified on supporting documents. Guidance on bank letters now states “If you provide this document you should consider providing additional documents to show the origins of the money in your account”

- “applicants to present evidence of previous employment even covering a period of many years. The application form merely requires evidence of current occupation and personal circumstances. Hence, applicants would not expect they needed to submit detailed evidence of previous employment history. While it is understandable that Entry Clearance Officers may wish to see evidence of prior employment when employment status has recently changed, applicants are not advised to provide a detailed account of prior employment history”

Each case is assessed on its merits. Guidance on employment letters now states “If you have recently entered new employment you should consider providing details of your previous employment and salary history”.

- “applicants intending to study beginner’s English in the UK to evidence attempts to learn English in the home country first”.

There was one case from the file sample refused on this basis. ECMs agreed that this was not a suitable ground for refusal and the applicant has now been issued with a visa.

5.12 All but one case was assessed according to the correct Immigration Rules. In this case, paragraph 41 rather than paragraph 56 was applied in regard to a student visitor application. Paragraph 41 of the Immigration Rules sets out the requirements for business visitors to the UK while student visitors must meet paragraph 56 requirements.

Paragraph 41 of the Immigration Rules does not set out the requirements for business visitors. These are set out in paragraph 46G.

Paragraph 56 of the Immigration Rules sets out the requirements for the ‘refusal of extension of stay as a visitor for private medical treatment’. The requirements for student visitors are set out in paragraph 56K of the Immigration Rules.

5.4 Reports that “Entry Clearance Assistants utilised a checklist in deciding which documents should be forwarded to the document verification team. We were told that local knowledge was also an important factor in this assessment. Although we observed a few documents submitted by applicants in our file sample which could have merited further verification checks which were not undertaken, the establishment of a dedicated document verification team demonstrates an enhanced focus on verification work within the visa section.”

Staff in Istanbul have specialist knowledge of the documents they consider. Documents are verified according to risk profiles drawn up using extensive local knowledge of documents submitted with visa applications.

Paragraph 5.21 reports “In a few instances it appeared that Entry Clearance Officers were making a value judgement regarding the intention or means of funding the visit. In one case an applicant intended to spend some of their annual leave with a friend in the UK and the remainder with their daughter who resided in the applicant’s country of origin. The wording of the refusal notice suggested that the deciding officer considered it would be more appropriate for the applicant to spend the entire leave period with their daughter.

The ECM team agreed that this was on the face of it a weak ground for refusal but after a more in depth examination of the papers, further reasons for refusal emerged and a new refusal letter was produced.

