

From: European Operational Policy Team
Subject: Non-compliance – interim guidance
Date: 11th February 2013
Issue number: 02/2013

Purpose of notice

1. This notice provides interim guidance to European caseworkers on how to consider applications where the applicant fails to attend a marriage interview when requested to do so.

Background

2. The trial of interviews for European marriage applicants began in September 2012. Attendance is at around 40%. Currently there is no provision within the Immigration (European Economic Area) Regulations 2006 (“the Regulations”) to refuse an applicant on the basis that they have failed to attend an interview or otherwise failed to comply with UKBA processes.
3. In order to ensure that applicants comply with UKBA processes, including the requirement to attend an interview where requested, changes to the EEA Regulations are currently being progressed and are expected to take effect in May 2013.
4. This note provides guidance on how to deal with such cases in the interim.

Interim process for dealing with non-attendance at interview

5. Applicants will initially be given two opportunities to attend an interview. If they fail to attend two scheduled interviews without good reason, then their case will fall to be dealt with in one of two ways:
 - a. Where there is other evidence that the marriage is not genuine caseworkers should refuse on the basis that the evidence, together with the failure to attend an interview, demonstrates that on the balance of probabilities the marriage is a sham. As this is a substantive refusal of the application it will attract a right of appeal where the relevant provisions of regulation 26 have been met and it is open to the applicant to appeal the decision.
 - b. Where there is insufficient evidence to refuse the application caseworkers should return the application to the applicant without making a substantive decision, and the case noted as

withdrawn on CID. It should be made clear to the applicant that it is open to them to resubmit their application however they must be advised that they will be called again for interview. As this is not a substantive refusal there will be no right of appeal attached.

6. If the applicant resubmits the application they will be given a further two opportunities to attend an interview. If they fail to attend these two scheduled interviews, without good reason, then their application will fall for substantive refusal. Caseworkers should refuse on the basis that failure to attend a total of four scheduled interviews demonstrates that on the balance of probabilities the marriage is a sham. As this is a substantive refusal there will be a right of appeal where the relevant provisions of regulation 26 have been met, and it is open to the applicant to appeal this decision.
7. Caseworkers should note that in any case where the applicant's appeal against the decision to refuse is unsuccessful, any further application which is made on the same grounds can be refused and certified under regulation 26(5).
8. If you have any queries about this notice, please contact <REDACTED – section 40(2)> or <REDACTED – section 40(2)> on <REDACTED – section 40(2)>, or email the European Operational Policy Mailbox at EuropeanOperational@UKBA.gsi.gov.uk

<REDACTED – section 40(2)>
Head of European Operational Policy
18th February 2013