



An inspection into failed right of abode applications and referral for enforcement action

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An inspection into failed right of abode applications and referral for enforcement action

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Our purpose

To help improve the efficiency, effectiveness and consistency of the Home Office's border and immigration functions through unfettered, impartial and evidence-based inspection.

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Foreword

Under section 50(1)(b) of the UK Borders Act 2007 the Home Secretary may request the Independent Chief Inspector of Borders and Immigration to report *'in relation to specified matters'*.

On 29 January 2016, the Home Secretary wrote to request that I review *'failed right of abode applications and referral for enforcement action'*.

The review took the form of a standard inspection. The inspection found that Right of Abode applications form a very small proportion of the caseload of the Home Office Nationality Group. Between 2005 and 2015, the Home Office recorded 26,024 Right of Abode applications, of which 4,771 were refused.

File sampling suggested that a significant percentage of refused applications were from individuals with no right to remain at the time of applying, and also that many applicants had employed deception in attempting to obtain a Certificate of Entitlement to Right of Abode. However, there had been no consistency in referring refused applicants for enforcement action.

Right of Abode applications had not been seen in the wider context of immigration control. Most of the Nationality Group's caseload concerned individuals who were in the UK legally, rather than immigration offenders. Refusal of a Right of Abode application was not regarded as a negative immigration decision. Consequently, refused Right of Abode applicants were not placed automatically into the Migration Refusal Pool (MRP), where they would be visible to Removals Casework. Overstayers were not being identified or referred for enforcement action, and relevant details (e.g. new addresses) for absconders were not being passed on for enforcement action. Where forged documents had been submitted with an application, these had been retained, but there had been no enforcement follow-up.

More recently (in 2016), some referrals had been made and some refused applicants had been adopted for enforcement action. However, the referral process was not in line with Home Office guidance and remained sub-optimal. Managers in the Right of Abode team had since acknowledged the need to improve co-ordination with enforcement colleagues and to put in place a referral process for refused cases that followed the relevant guidance.

This report makes three recommendations for improvement. It was sent to the Home Secretary on 19 August 2016.

1. Scope

- 1.1 The inspection examined the effectiveness of actions taken by the Home Office and others after an application for right of abode had been refused. It did not look at the quality of decisions to refuse applications.

2. Methodology

2.1 Inspectors:

- reviewed management information and Home Office guidance relating to right of abode cases, including instructions on the procedure to be followed after an application had been refused;
- sampled 50 failed right of abode cases from 2005 (where refusal decisions were issued between 1 June and 30 November 2005) and another 50 from 2015 (where refusal decisions were issued between 1 June and 30 November 2015). In both instances, all of the applications were made in the UK; and
- interviewed caseworkers and managers concerned with right of abode applications (on 8 June 8 and 17 June 2016).

3. Right of Abode

Background

- 3.1 The Immigration Act 1971 (the '1971 Act') introduced the general principle of 'right of abode in the United Kingdom'. Under the 1971 Act, those with right of abode would be 'free to live in, and to come and go into and from, the United Kingdom without let or hindrance'. Meanwhile, those not having right of abode 'may live, work and settle in the United Kingdom by permission' and with 'their entry into, stay in and departure from the United Kingdom' subject to 'regulation and control'.
- 3.2 Under the 1971 Act (as amended by the British Nationality Act 1981), the following citizens of the UK and Colonies (CUKCs)¹ acquired the right of abode in the UK:
- those born, registered, naturalised or adopted in the UK;
 - those whose parent or grandparent was born, registered, naturalised or adopted in the UK;
 - those who had lived in the UK for a period of 5 years before 1 January 1983, and were settled in the UK at the end of that 5 year period; and
 - those women who had been married to a man with the right of abode before 1 January 1983.
- 3.3 In addition, the following Commonwealth citizens who had right of abode on 31 December 1982, and have not ceased to be Commonwealth citizens at any time since then, qualify:
- those with a parent or adoptive parent who, at the time of the person's birth or adoption, was a citizen of the United Kingdom and colonies by birth in the UK; and
 - those women who had been married to a man with the right of abode before 1 January 1983.

The application process

- 3.4 An individual who believes they meet the requirements of right of abode may apply for a 'Certificate of Entitlement to Right of Abode in the United Kingdom'. Where successful, the certificate is affixed to the applicant's passport, and remains valid until the expiry of that passport. Before 21 December 2006, a certificate could be transferred from an expired passport into a new one without reconsideration of the holder's entitlement. Since that date, a new application has been required when a passport expires. On the same date, a person holding a current UK passport and a foreign passport ceased to be eligible for a Certificate of Entitlement in the latter.²

¹ A person born before 1 January 1949 in the UK or in a British colony became a British subject. On 1 January 1949, the British Nationality Act 1948 came into force. The 1948 Act provided for two forms of British subject:

- those British subjects who had a connection with the UK or a remaining colony acquired the status 'British subject: citizen of the UK and Colonies (CUKC)';
- those with a connection with a former colony became British subjects with the citizenship of the newly independent country.

² The changes to entitlement are set out in the Immigration (Certificate of Entitlement to the Right of Abode in the United Kingdom) Regulations 2006, as amended by the Immigration (Certificate of Entitlement to Right of Abode in the United Kingdom) (Amendment) Regulations 2011.

- 3.5 Refusal of a right of abode application carried a right of appeal under section 82(2)(c) of the Nationality, Immigration and Asylum Act 2002. The Immigration Act 2014 removed this appeal right, replacing it with the right to request that the Home Office reconsiders the decision. This provision was implemented for right of abode applicants with effect from 6 April 2015.
- 3.6 Applications for a 'Certificate of Entitlement to Right of Abode in the United Kingdom' are considered by caseworkers in the Home Office's Nationality Group, which is responsible for decision-making on all applications for citizenship in the UK. Right of abode cases form a small part of the Nationality Group's overall annual caseload of 180-200,000 cases.
- 3.7 The Home Office provided data for right of abode applications between 1 January 2005 and 31 December 2015. The figures at Figure 1 include applications made in the UK (the vast majority), applications at the UK border, and those made at overseas visa posts.³

Figure 1: Number of Right of Abode applications for years 2005 to 2015

Outcome Year	Granted	Refused	Total
2005	4,195	991	5,186
2006	3,577	511	4,088
2007	1,694	1,182	2,876
2008	1,742	416	2,158
2009	1,485	354	1,839
2010	1,338	191	1,529
2011	1,371	136	1,507
2012	1,238	145	1,383
2013	1,299	159	1,458
2014	1,669	287	1,956
2015	1,645	399	2,044
Total	21,253	4,771	26,024

Proof of entitlement

- 3.8 In order to prove entitlement to right of abode, an applicant must provide evidence of identity, usually a foreign passport and documentation that establishes their eligibility. The latter vary, but might include the applicant's or a parent's UK birth certificate, evidence of a parent's registration in the UK prior to a Commonwealth country declaring independence, or a marriage certificate.

Checking and recording applications and decisions

- 3.9 Nationality Group caseworkers consider applications against the entitlements provided by the relevant legislation and enter the case details onto the Home Office Casework Information Database (CID).

³ Over the 11 year period for which electronic data was available, Home Office records showed that 8 applications were made to overseas posts and 2,177 applications were made at the UK border.

Right of abode applications are entered on that part of the Home Office Case Information Database (CID) used for recording decisions on nationality and right of abode applications (known as 'NCID'). Caseworkers check an applicant's immigration history and any 'Special Condition Flags' on CID before making a decision on a case.⁴

Process after a refusal decision

- 3.10 Until 6 April 2015, the standard procedure after a refusal decision was to return the applicant's documents with the decision letter, and to send the paper case file to the appeals processing team in preparation for any appeal that might be made.
- 3.11 From 6 April 2015, the file is either sent to storage or to other business areas of the Home Office if required for enforcement action. If an applicant requests a reconsideration of a refusal decision, the file is retrieved and the case reassessed by a caseworker.
- 3.12 Unlike most refusal decisions, which are entered elsewhere on CID, nationality cases, including right of abode, subject to a negative decision (i.e. a refusal) and where the applicant has no leave to remain, do not flow automatically into the Migration Refusal Pool (MRP). The MRP is a dataset that enables the Home Office to track the cases of applicants who have no leave to remain in the UK.
- 3.13 Applicants for a Certificate of Entitlement to Right of Abode in the United Kingdom are not required to declare their immigration status. Many applicants will have leave to remain at the time of applying. Some may have Indefinite Leave to Remain, but are seeking a Certificate of Entitlement in order to be able to leave the UK for extended periods and be free to return; others might apply having entered the UK on a short-term visa, such as a visitor visa.

Appeals

- 3.14 The table at Figure 2 shows the number of appeals decided in each year from 2005 to 2015.

Outcome Year	Allowed	Dismissed	Total
2005	9	42	51
2006	26	49	75
2007	4	25	29
2008	20	31	51
2009	10	33	43
2010	10	19	29
2011	4	11	15
2012	7	19	26
2013	5	8	13
2014	7	26	33
2015	6	27	33
Total	108	290	398

⁴ Special Condition Flags may record, for example, if an applicant who was previously in contact with the Home Office has ceased to comply with a requirement to report regularly. Individuals who fail to report may be flagged as 'absconders' on CID and on the Police National Computer (PNC).

3.15 Once all appeal rights were exhausted, or where no appeal was received, the Home Office was able to begin enforcement action against those without leave to remain in the UK. Home Office records showed that of 4,457 applicants refused a Certificate of Entitlement to Right of Abode between 2005 and 2015, and who did not appeal against the refusal or whose appeal rights were exhausted, 52 had departed voluntarily from the UK and 93 were subject to enforced removal.⁵ At the time of the inspection, the Home Office had not established how many of the remaining 4,312 had no leave to remain at the point of having appeal rights exhausted, but reported that work has started to address this.

⁵ The figure of 4,457 refusals does not match the 4,771 total for refusals in Figure 1 because of allowed appeals and cases where appeals had yet to be concluded at December 2015. These figures are provisional and have not been quality assured under National Statistics protocols.

4. Inspection findings

Sample of 2005 right of abode refused applications

- 4.1 Of the 50 refused cases sampled from 2005:
- in 21 cases, the applicant had extant leave to remain at the time the refusal decision was issued, although in two cases this leave was due to expire imminently;
 - in 18 cases, the immigration status of the individual could not be determined with certainty from the record; and
 - in 11 cases, the applicant had overstayed their leave to remain at the time the application for a Certificate of Entitlement of right of abode was refused.
- 4.2 None of the 11 cases where the applicant had overstayed their leave to remain were referred for enforcement action after refusal of the right of abode application. An example of one such case is at figure 3.

Figure 3: Case Study: Overstayer not referred for enforcement action after refusal

The applicant:

- entered the UK on a visitor visa valid from 19 August 2004 to 19 February 2005; and
- on 17 February 2005, applied for a Certificate of Entitlement to Right of Abode, claiming eligibility through her father, and submitting a valid passport, a copy of her birth certificate issued in 2004 and a copy of her father's birth certificate.

The Home Office:

- noted on CID that the identity of the applicant was accepted, but that her birth certificate lacked embossment or watermark, while the date on her father's was illegible, and that her relationship to her father could not be accepted on the basis of this documentation;
- on 6 May 2005, wrote to the applicant asking her to provide originals of the documents submitted and to explain why, if she was a British Citizen as claimed, she had entered the UK on a visit visa; and
- on 29 September 2005, having received no reply, refused the application on the grounds of unacceptable documentation and returned the documents, including her passport, to the applicant.

Chief Inspector's comments

This case should have been referred for enforcement action, as the applicant had overstayed her visit visa. The possible use of false supporting documents should also have been investigated. There is no trace of this individual on UK passport records or as having made any further applications to visit the UK.

The Home Office response

No investigation [into the suspect documents] was recorded. The caseworker accepted the applicant's identity, and birth certificates from the applicant's country of origin are very difficult to verify.

Once the decision was taken to refuse the application, the file was then passed to the Appeals team for their action. Enforcement action is pursued once appeal rights are exhausted.

- 4.3 Of the 50 refusal decisions sampled from 2005, in 23⁶ there was some evidence of deception having been employed by the applicant. Examples included:
- submission of foreign passports that appeared to be counterfeit;
 - genuine passports that had been altered so that the applicant appeared to have a right of abode to which they were not in fact entitled;
 - use of a UK passport in another identity (the passport having been reported lost or stolen); and
 - use of another identity (for example, one taken from a birth certificate of a child that had died).
- 4.4 Where caseworkers had concerns that a passport or other identity document was not genuine, or had been altered, the documents would be sent to a specialist Home Office forgery unit for examination before making a decision on the application. If a document was found to be a counterfeit, or to have been altered, or to pertain to another identity, the right of abode application would be refused.
- 4.5 Only one of the cases in the sample where deception appeared to have been employed was referred for enforcement action after the right of abode application was refused and was appeal rights exhausted. Figure 4 is illustrative of what happened in most cases.

Figure 4: Case Study: Enforcement action not taken against probable imposter

The applicant:

- on 13 March 2003, applied for a Certificate of Entitlement to Right of Abode, submitting a passport.

⁶ This figure includes five cases where the application for right of abode was made in 2001. Three of these involved the use of altered foreign passports, one the use of another UK citizen's identity, and one the use of the UK birth certificate of a dead child. All five cases were put on hold pending investigation into the fraudulent documents, and refusal of the right of abode application was not recorded until 2005.

The Home Office:

- on 16 June 2003, sent the applicant's passport to the National Forgery Service for checking;
- on 6 October 2003, received a report from the National Forgery Service indicating that the passport was genuine, but that a person whose photograph and signature differed from those of the applicant had been issued with a replacement passport in 2002, having reported one lost in 1990;
- requested a copy of the passport application from the Passport Office, and wrote to the applicant asking for an explanation; and
- on 28 September 2005, having received no reply, refused the application and noted on CID 'As applicant is probable imposter docs to ROA passport and file to [storage].'

Chief Inspector's comments

This case should have been referred for enforcement action as the applicant had used deception in an attempt to obtain a right of abode certificate.

- 4.6 Home Office staff said that as right of abode was an entitlement that depended entirely on factors external to the individual concerned, there was no character element involved in determining whether an application should be refused.⁷ Retention of documents found to be fraudulent was considered to be the appropriate action in such cases. Any systematic investigation of document abuse would be a matter for other areas within the Home Office concerned with fraud prevention.
- 4.7 Staff and managers were aware of the potential for misuse of documents in right of abode applications. They stated that the changes in the regulations enacted in 2006, which removed the provision for transferring certificates from an expired passport to a new one, and which no longer allowed an individual to hold both a British Citizen passport and a foreign passport with a certificate of entitlement, had been put in place to address fraudulent activity.

Sample of 2015 right of abode refused applications

- 4.8 Of the 50 refused cases sampled from 2015:
- in four cases, the applicant had had extant leave to remain at the time the refusal decision was issued;
 - in two cases, the applicant's immigration status was unknown; and
 - in 44, the applicant had no leave to remain in the UK at the time the application for a certificate of entitlement of right of abode was refused.
- 4.9 The significantly higher proportion of applicants who had no leave to remain (either illegal entrants or overstayers) compared to the 2005 sample is in part accounted for by the better record-keeping for recent cases, allowing immigration status to be determined in most instances.

⁷ An application may be refused where a criminal conviction meets the threshold that would warrant deprivation of right of abode. Under section 2A of the Immigration Act 1971, as inserted by section 57 of the Immigration, Asylum and Nationality Act 2006, a person who has right of abode on the basis of Commonwealth (but not British) citizenship (i.e. under section 2(1)(b) of the 1971 Act as amended) may be deprived of that right 'if the Secretary of State thinks it would be conducive to the public good for the person to be excluded or removed from the United Kingdom'. During the passage of the 2006 Act, ministers suggested that such action may be appropriate where the person:

- has encouraged or assisted others to commit acts of terrorism;
- has committed war crimes, public order offences or other serious crime; or
- has carried out acts seriously prejudicial to vital national interests, including espionage and acts of terrorism directed at the United Kingdom or an allied power.

Home Office managers said that there had also been a change in the profile of applicants, with more seeking to use an application for a Certificate of Entitlement for Right of Abode as a means to frustrate the Home Office's attempt to enforce an individual's removal from the UK.

- 4.10 The recorded use of fraudulent documents was much lower in the 2015 sample. Inspectors found three cases where applicants appeared to have attempted to obtain a Certificate of Entitlement through the use of altered documents or another identity, including one case where an applicant appeared to have obtained a British passport through use of another identity.
- 4.11 In two of the 50 cases sampled, the application for a Certificate of Entitlement was made while the individual was in immigration detention awaiting enforced removal from the UK. In both, caseworkers prioritised the resolution of the application. Figure 5 refers.

Figure 5: Case Study: Detained case where an application was dealt with expeditiously

The applicant:

- on 6 July 2005, entered the UK on a visit visa valid from 24 June 2005 to 24 December 2005;
- on 15 November 2010, applied for further leave to remain on human rights grounds and was refused on 16 December 2010;
- on 4 March 2011, applied for a reconsideration of this refusal decision; and
- on 10 June 2015, applied for a Certificate of Entitlement to Right of Abode while in detention.

The Home Office:

- on 6 June 2014, refused the human rights claim and certified it as clearly unfounded;
- on 24 April 2015, detained the applicant as an immigration offender;
- on 22 June 2015, refused the right of abode application; and
- on 17 July 2015, enforced removal of the applicant from the UK.

Chief Inspector's comments

The caseworkers considering the right of abode application liaised efficiently with enforcement colleagues, providing a decision on the application within 12 days of its receipt. This enabled detention to be maintained and the individual to be removed without further delay.

- 4.12 In another case, a family who were in the process of being removed made a right of abode application. The family was not being detained, but the application was dealt with as a priority and the family was removed.
- 4.13 Of the 44 cases where individuals did not have leave to remain, in 36 cases removal was not being actively pursued at the time the application was received. None of these were referred for enforcement when the application was refused.
- 4.14 The other eight cases were being managed by the Home Office's Removals Casework teams at the time the application for a Certificate of Entitlement was made. As consideration of entitlement to right of abode is a specialist area, these cases were passed from Removals

Casework to the Nationality Group for resolution. None of the eight were referred back to Removals Casework for further action once the right of abode application had been refused. Figure 6 is an example.

Figure 6: Case Study: Case not referred back to Removals Casework

The applicant:

- on 18 April 2007, entered the UK on a visit visa valid from 23 March 2007 to 23 September 2007;
- on 20 September 2007, applied for further leave to remain as a carer for family members (this application was refused on 1 November 2007);
- on 27 September 2012, applied again for leave to remain as a carer for family members (this application was refused on 10 December 2013);
- on 6 March 2014, applied for a Judicial Review of this decision (this was refused on 25 October 2014);
- on 23 March 2015, made a claim for further leave on human rights grounds (this was refused on 30 April 2015);
- on 30 May 2015, made a further application for leave to remain on compassionate grounds, which was rejected as all fees had not been paid; and
- on 24 September 2015, applied for a Certificate of Entitlement to Right of Abode.

The Home Office:

- on 9 March 2015, served removal papers on the applicant and required her to report to the Home Office at two-weekly intervals;
- in May 2015, sought to detain the applicant in order to effect enforced removal, but detention was not carried out since alternative care arrangements for family members had not been confirmed by social services;
- on 12 October 2015, following receipt of the right of abode application, Removals Casework put removal action on hold and transferred the case to the Right of Abode team; and
- on 28 October 2015, refused the right of abode application.

Chief Inspector's comments

The Home Office has expended considerable effort in dealing with repeated applications and progressing this case towards removal. However, after the right of abode application was refused the case was not referred back to Removals Casework, and there had been no further action at the time of the inspection.

- 4.15 Right of abode caseworkers told inspectors that they had assumed that Removals Casework would continue to monitor such cases, and would be aware that an application had been resolved. Managers confirmed that they did not know that they needed to refer a case back to Removals Casework after completion.
- 4.16 Other cases sampled related to individuals who had overstayed their leave and with whom the Home Office had lost contact. Some known overstayers had been flagged up as absconders on Home Office systems in order that enforcement action could be pursued should the person come to light. These cases had also not been referred to Removals Casework. One is discussed at Figure 7.

Figure 7: Case Study: Absconder not referred for enforcement

The applicant:

- on 24 March 2001, was refused to leave to enter at Gatwick Airport. He was given temporary admission and told to report back the next day for a return flight. He failed to report and was listed as an absconder;
- on 2 August 2011, made telephone contact with immigration staff at Gatwick Airport because he had been advised to do so by his solicitor. His absconder marking was removed and he was instructed to report to the Home Office. He failed to do so and the absconder marking was reinstated on 12 September 2011;
- on 30 April 2015, made an application for a Certificate of Entitlement to Right of Abode, providing a new address and a passport valid until 2024; and
- on 25 April 2016, made an application for further leave to remain.

The Home Office:

- on 26 October 2015, checked the applicant's immigration history and flags on CID that showed the applicant was listed as an absconder, but concluded that this had '*no relevance to the decision*' (regarding the right of abode application);
- on 26 October 2015, refused the right of abode application and returned the applicant's passport; and
- did not refer the case for enforcement action.

Chief Inspector's comments

This case concerned a known overstayer who had been registered as an absconder. While the required checks were made on this applicant, appropriate follow-up steps were not taken. His details, including the new address provided with the application, should have been referred to Immigration Enforcement for action, and his passport should have been retained.

Home Office response

There is no character requirement for right of abode applications. Unless the check shows a reason why an application should not be approved [such as a serious criminal record], results are classed as '*not relevant to the decision*.'

A meeting has been arranged with Enforcement colleagues to develop a better understanding of which cases should or should not be referred. Passports were not retained at the time this application was considered.

- 4.17 From 6 April 2015, when the right of appeal was removed for right of abode applicants, there was no new process set up to ensure that refused applications were referred for enforcement action. Staff reported that in the months following the change in appeal rights they became aware of cases they thought should be followed up. On advice from colleagues in other casework areas, they devised a process for tasking cases to local Immigration, Compliance and Enforcement (ICE) teams for action, using the Home Office CID database. In summer 2015, a handful of test cases were referred in this way, and others were put on hold pending the outcome of the test. When no responses were received to these referrals, the test was discontinued.⁸
- 4.18 During the inspection, inspectors were informed that in January 2016 an alternative process was put in place, the intention of which was for all refused cases to be referred to ICE teams by email at the point where there was no extant leave, no record of enforcement interest, or no subsequent pending applications. Between 20 January 2016 and 5 May 2016, 58 out of the total of 186 refused applications were referred to an ICE team in this way.⁹
- 4.19 Both processes were at odds with Home Office guidance. Since 2013, when a centralised Removals Casework team was created to manage to conclusion the cases of migrants without leave to remain, guidance has stated that cases for enforcement action should be referred to Removals Casework in the first instance. Removals Casework would review the cases referred and pass those that were suitable cases for further action, such as detention and removal, to ICE teams. Managers and staff in the Right of Abode team were unaware of this process.¹⁰
- 4.20 Home Office guidance also states that where a negative decision (i.e. a refusal) has been made on an application and the applicant has no leave to remain, travel documents should be retained by the Home Office to enable removal action to be taken in appropriate cases. Managers and staff in the Right of Abode team said they were not aware of this until April 2016, and until then had been returning travel documents when an application was refused.¹¹
- 4.21 Managers suggested that the lack of knowledge about how to refer cases for enforcement action, and which cases would be suitable for referral, stemmed from the different nature of the cases dealt with by Nationality Group compared to other areas of the Home Office, where there was more focus on the potential for abuse of some application routes. Right of abode applications were viewed in line with most nationality applications, which were generally received from people who were already long-term residents in the UK, and who were compliant with immigration regulations.
- 4.22 Managers acknowledged that there was a need to put in place a referral process for refused cases that aligned with the requirements of enforcement colleagues, and had planned a workshop in June 2016 to discuss what was needed. They were not clear whether right of abode cases that had been refused were being routed into the MRP, and would be among those available to Removals Casework to be considered for enforcement action, and agreed that this was another indication that co-ordination between caseworking and enforcement processes needed to be improved.

⁸ Caseworkers said they later learned that some responses to the test referrals had been made by ICE teams, but had not been noticed as they were made in unfamiliar sections of the CID database.

⁹ In its factual accuracy response to the draft report, the Home Office stated that in January 2016 it put 'an alternative process in place whereby all refused Right of Abode' cases where there was no leave to remain were referred to ICE teams in Immigration Enforcement' and that it 'has since reviewed all refused Right of Abode cases since April 2015 where the applicant had no extant leave, nor record of enforcement interest nor subsequent pending applications and has now referred them all to Immigration Enforcement.'

¹⁰ <https://horizon.fcgsi.gov.uk/section/work-tools-and-guides/topic/asylum-immigration-and-nationality/modernised-guidance-guidance-rules-and-forms/general-guidance/transfer-or-refer-case/how-refer-cases-removals-casework/referring-permanent-and-temporary-migration-cases-removals>.

¹¹ <https://horizon.fcgsi.gov.uk/section/work-tools-and-guides/topic/asylum-immigration-and-nationality/modernised-guidance-guidance-rules-and-forms/general-guidance/retention-valuable-documents>.

5. Conclusions

- 5.1 Right of Abode (RoA) applications form a very small proportion of the caseload of the Home Office Nationality Group. Between 2005 and 2015, the Home Office recorded 26,024 RoA applications, of which 4,771 were refused.
- 5.2 Based on file sampling, it is possible that a significant percentage of the refused applications were from individuals who had no right to remain at the time of their application, and also that many applicants had employed deception in attempting to obtain a Certificate of Entitlement to Right of Abode. However, there has been no consistency in referring refused applicants for enforcement action.
- 5.3 In part, the lack of enforcement action stemmed from not considering RoA applications in the wider context of immigration control. Most of the Nationality Group's caseload concerned individuals who were in the UK legally rather than immigration offenders, and refusal of an RoA application, like an application for Naturalisation, was not regarded as a negative immigration decision. Consequently, refused RoA applicants with no leave to remain were not placed automatically into the Migration Refusal Pool (MRP) where they would be visible to Removals Casework (responsible for managing the cases of individuals who remain in the UK after their leave has expired).
- 5.4 Where the Right of Abode team suspected documents submitted with an RoA application to be fraudulent or forged, it sent them for expert checking, retaining those confirmed as non-genuine. However, based on file sampling, in only a very few instances were cases passed to enforcement officers for further action, meaning that individuals were free to pursue further applications for leave or to seek British Citizenship.
- 5.5 In the more recent (2015) sample of refused RoA applications, almost all applicants had overstayed their leave to remain in the UK at the time of applying, in many cases by several years. Overstayers were not being identified or referred for enforcement action. Valuable information that was potentially relevant to enforcement action, such as new addresses for immigration offenders with whom the Home Office had lost contact ('absconders'), was not being passed on. The result was that opportunities for immigration control were being missed.
- 5.6 In January 2016, the Right of Abode team introduced a process for referring all refused RoA cases where there was no extant leave to remain and no record of enforcement interest to Immigration Compliance and Enforcement teams. This was done without consultation with enforcement specialists, and was not in line with Home Office guidance on how or to whom cases should be routed. While some cases were adopted for enforcement, the process remained sub-optimal. Managers had since acknowledged the need to improve co-ordination with enforcement colleagues and to put in place a referral process for refused cases that followed the relevant guidance.

6. Recommendations

The Home Office should:

1. Ensure that individuals refused Right of Abode applications, without leave at the time of refusal, flow into the Migrant Refusal Pool (MRP) for enforcement action to be progressed where appropriate.
2. Ensure that the referral process for refused cases that are suitable for enforcement action, in particular absconders or long-term overstayers, is aligned with guidance, and that cases referred to the Right of Abode team by Removals Casework (where enforcement action is already underway) are referred back on completion.
3. Where there is evidence of deception having been used to attempt to obtain a Certificate of Entitlement to Right of Abode, ensure that this information is available to caseworkers throughout the Home Office, including Her Majesty's Passport Office (HMPO), when considering any future applications, e.g. for a visa or UK passport.

Appendix 1 – Role and remit of the Chief Inspector

The role of the Independent Chief Inspector of Borders and Immigration (until 2012, the Chief Inspector of the UK Border Agency) was established by the UK Borders Act

2007. Sections 48-56 of the UK Borders Act 2007 (as amended) provide the legislative framework for the inspection of the efficiency and effectiveness of the performance of functions relating to immigration, asylum, nationality and customs by the Home Secretary and by any person exercising such functions on her behalf.

The legislation empowers the Independent Chief Inspector to monitor, report on and make recommendations about all such functions. However, functions exercised at removal centres, short-term holding facilities and under escort arrangements are excepted insofar as these are subject to inspection by Her Majesty's Chief Inspector of Prisons or Her Majesty's Inspectors of Constabulary (and equivalents in Scotland and Northern Ireland).

The legislation directs the Independent Chief Inspector to consider and make recommendations about, in particular:

- consistency of approach
- the practice and performance of listed persons compared to other persons doing similar activities
- the procedure in making decisions
- the treatment of claimants and applicants
- certification under section 94 of the Nationality, Immigration and Asylum act

2002 (c. 41) (unfounded claim)

- the law about discrimination in the exercise of functions, including reliance on section 19D of the Race Relations Act 1976 (c. 74) (exception for immigration functions)
- the procedure in relation to the exercise of enforcement powers (including powers of arrest, entry, search and seizure)
- practice and procedure in relation to the prevention, detection and investigation of offences
- the procedure in relation to the conduct of criminal proceedings

- customs functions have been appropriately exercised by the Secretary of State and the Director of Border Revenue
- the provision of information
- the handling of complaints; and
- the content of information about conditions in countries outside the United Kingdom, which the Secretary of State compiles and makes available, for purposes connected with immigration and asylum, to immigration officers and other officials.

In addition, the legislation enables the Secretary of State to request the Independent Chief Inspector to report to her in writing in relation to specified matters.

The legislation requires the Independent Chief Inspector to report in writing to the Secretary of State. The Secretary of State lays all reports before Parliament, which she has committed to do within eight weeks of receipt, subject to both Houses of Parliament being in session. Reports are published in full except for any material that the Secretary of State determines it is undesirable to publish for reasons of national security or where publication might jeopardise an individual's safety, in which case the legislation permits the Secretary of State to omit the relevant passages from the published report.

As soon as a report has been laid in Parliament, it is published on the Inspectorate's website, together with the Home Office's response to the report and recommendations.

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