

Title: Restricting the Right of Appeal for Family Visitors to the UK IA No: HO0070 Lead department or agency: UK Border Agency/ HM Courts and Tribunal Service Other departments or agencies:	Impact Assessment (IA)		
	Date: 29/03/2012		
	Stage: Final		
	Source of intervention: Domestic		
	Type of measure: Primary legislation		
Contact for enquiries:			

Summary: Intervention and Options	RPC Opinion: RPC Opinion Status
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Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, One-Out? Measure qualifies as Zero Net Cost
£107m	£0m	£0m	No

What is the problem under consideration? Why is government intervention necessary?
Expenditure on family visit visa appeals is a disproportionate use of taxpayer funding for the benefit sought.

Those who are refused a family visit visa currently have a full right of appeal and in 2010-11 these appeals made up around 36 per cent of all immigration appeals. Each family visit visa appeal is estimated to cost the tax payer around £590. The Ministry of Justice have recently introduced a fee for this type of appeal from December 2011, which is expected to reduce the costs to the taxpayer by around £120 per appeal, but the cost is still disproportionately high.

What are the policy objectives and the intended effects?
The Government's objectives are to:

- Reduce burdens on the taxpayer;
- Prevent and tackle abuse of family migration;
- Increase public confidence in our immigration system by tackling abuse and reducing burdens on the taxpayer and public services; and

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)
The following options have been considered:

Option 0: Do nothing - continue to grant the full right of appeal to family visit visa cases.

Option 1: Remove the full right of appeal for family visit visa cases

Option 1 is the preferred option.

Will the policy be reviewed? It will not be reviewed. If applicable, set review date: Month/Year					
Does implementation go beyond minimum EU requirements?				N/A	
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.		Micro Yes/No	< 20 Yes/No	Small Yes/No	Medium Yes/No
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)				Traded: N/A	Non-traded: N/A

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.

Signed by the responsible Minister:  Date: 09 May 2012

Summary: Analysis & Evidence

Policy Option 1

Description: Remove the full right of appeal for family visit visas

FULL ECONOMIC ASSESSMENT

Price Base Year 2011	PV Base Year 2013	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: 60	High: 153	Best Estimate: 107

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0	3	29
High	0	7	64
Best Estimate	0	5	46

Description and scale of key monetised costs by 'main affected groups'

Lost appeal income to Ministry of Justice - £29m (PV)

Increase in UKBA casework costs - £18m (PV)

Other key non-monetised costs by 'main affected groups'

The number of judicial reviews may increase as a result of the legislative change.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0	9	89
High	0	23	218
Best Estimate	0	16	154

Description and scale of key monetised benefits by 'main affected groups'

Reduced appeal costs to HMCTS - £95m (PV) - and UKBA - £46m (PV)

Increased fee income to UKBA - £10m (PV)

Increase in airline and tourism revenues - £3.0m (PV)

Other key non-monetised benefits by 'main affected groups'

Reduced costs associated with asylum cases entering the UK through the family visit visa route.

Key assumptions/sensitivities/risks

Discount rate (%)

3.5

Baseline volume of appeals - expected to be 36,000 p.a. since the introduction of charges for appeals.

0-100% of refused applications will reapply. The central estimates assumes a reapplication rate of 50%.

Residual appeals of around 10% will remain due to ECHR or race discrimination reasons.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: 0	Benefits: 0	Net: 0	No	Zero net cost

A. Strategic Overview

Family Visits

Many British citizens and persons settled in the UK have family members living outside of the UK resulting in a high volume of visa applications from people wishing to visit their family in the UK.

To meet the family visit visa requirements, the applicant must:

- Intend to visit the UK for no more than 6 months;
- Have enough money to support and accommodate themselves without working or recourse to public funds, or demonstrate that they will be supported and accommodated by friends or relatives; and
- Be able to meet the cost of their return journey.

Unlike other temporary entry clearance applications, refusal of an application for a family visit visa attracts a full right of appeal. This was abolished in 1993, but was reinstated in 2000. The Government now plans to remove the full right of appeal through the Crime and Courts Bill by January 2014. The Government also plans to restrict the definition of family attracting the full right of appeal from June 2012. This will be repealed by the Crime and Courts Bill. This impact assessment covers the impacts associated with the Crime and Courts Bill.

The impacts of restricting the definition of family are covered in the Family migration impact assessment.

A.2 Groups Affected

Those affected by the policy include:

British citizens and those settled in the UK with family visitors; Government departments and agencies, including the UK Border Agency (UKBA) which is responsible for administering the visa system and HM Courts and Tribunals Service (HMCTS) which administers Family Visit Visa appeals.

A.3 Consultation

Within Government

The Government departments consulted or involved in the formulation of the policy include: HM Treasury; Ministry of Justice; Foreign and Commonwealth Office; Department for Work and Pensions; HM Revenue and Customs; Better Regulation Executive; Department of Health; Department for Communities and Local Government; Cabinet Office; Department for Business, Innovation and Skills; Department for Education; and the devolved administrations.

Public Consultation

A 12-week public consultation to consider proposals was conducted by the UK Border Agency, running from 13 July 2011 to 6 October 2011. In total 5046 responses were received; 28% agreed that, beyond race discrimination and ECHR grounds, there should be circumstances in which an appeal right should be retained in family visit visa applications; 39% disagreed; there were 33% 'no opinion' responses.

B. Rationale

Family visit visas

Expenditure on family visit visa appeals is a disproportionate use of taxpayer funding for the benefit sought.

In 2011, 452,200 applications were received for a family visit visa, of which 370,200 (82 per cent) were issued, either on initial decision by the visa officer (78 per cent) or subsequent allowed appeal (4 per cent). A visit visa is for a short temporary stay with family in the UK. Those who are refused a family visit visa currently have a full right of appeal and in 2010-11 these appeals made up around 36 per cent of all immigration appeals. The cost to the taxpayer is estimated to be around £590 per appeal. The Ministry of Justice have recently introduced a fee for this type of appeal from December 2011, which is expected to reduce the costs to the taxpayer by around £120 per appeal. New evidence is often submitted on appeal which should have been submitted with the original application and the Government believes that it is not

right that the taxpayer should be footing the bill where the information should have been put forward as part of the original application.

Someone refused a visit visa may reapply as many times as they like, on payment of the £76 application fee (2012/13 price) , is not prejudiced by any previous refusal, and will receive a decision more quickly on a further application than they would the outcome of an appeal on a first application. It can take up to 8 months for a family visit visa appeal to be completed, compared with a 15-day turnaround time for processing visit visa applications.

C. Objectives

The Government's objectives are to:

- Reduce burdens on the taxpayer;
- Prevent and tackle abuse of family migration;
- Increase public confidence in our immigration system by tackling abuse and reducing burdens on the taxpayer and public services; and

D. Options

Option 0 is to make no changes (do nothing).

Option 1 is to reform the Family routes in the immigration system.

Reduce burdens on the taxpayer, increase integration and tackle abuse by removing the full right of appeal for those refused a family visit visa:

E. Appraisal (Costs and Benefits)

General Assumptions and Data

This IA covers a 10-year period from 2013/14, in line with guidance from the Regulatory Policy Committee (RPC) and the Better Regulation Executive (BRE). It aims to set out the best estimates of the policy impacts at the final stage of policy development, using the available evidence. Any key uncertainties are highlighted and key assumptions are tested in the sensitivity analysis section to show the range of potential impacts.

Option 0 – No change to policy

Baseline Volumes

The volume of **family visit visa (FVV) applications** was around 452,200 in 2011, of which around 370,200 were granted.

The Immigration and Asylum Chamber (IAC) of the First-tier Tribunal in HMCTS¹ received around 49,400 FVV appeals in 2010-11, which represented 36% of all IAC receipts that year; 38% of the 58,600 FVV appeals disposed in 2010-11 were allowed.² Other things being equal, the total volume of appeals is expected to fall following the introduction of IAC fee-charging on 19 December 2011. Consequently, the baseline volume of FVV appeal receipts in the IAC over future years is currently expected to be **around 36,000 p.a.**, although this figure is subject to uncertainty.

The Home Office makes no official forecast of future migration, but for the purpose of this IA we have assumed that family visa grants in the years following 2011 would have remained broadly constant in the absence of any other changes. On this basis, Family Visit Visa appeal volumes are estimated to remain steady from 2013/14 onwards. It is from this baseline that the impacts of policy proposals are calculated.

Costs and Benefits – Option 0

¹ The First-tier and Upper Tier IAC replaced the Asylum and Immigration Tribunal on 15 February 2010. HMCTS was created on 1 April 2011 upon the merger of Her Majesty's Courts Service and the Tribunals Service.

² See tables 1.1b and 1.2e of "Quarterly Tribunals Statistics, 4th quarter 2010-11", MoJ, <http://www.justice.gov.uk/downloads/publications/statistics-and-data/tribs-stats/quarterly-tribs-stats-q4-2010-11.pdf>

There will be no additional costs of option 0. However, there will be a number of risks and costs that will continue to arise, including:

Costs

Harms associated with abuse of the family routes:

- **Harms associated with other abuse of the family routes** – there is some evidence of abuse in the family visit route, such as abuse of the family visit visa as a means of seeking to remain in the UK. In 2009, 22,570 asylum applications were refused, 219 (1%) of which were claims matched to family visit visas issued on appeal. In 2011, 15,600 asylum applications were refused, 484 (3%) of which were claims matched to family visit visas issued on appeal.
- **Costs of family visit visa appeals** – there will continue to be around 36,000 FVV appeals per annum. The most recent UKBA estimate suggests the cost of UK Border Agency processing an appeal against refusal of entry clearance is typically around £190 at 2011/12 prices per case. The most recent estimate from HMCTS indicates that a family visit visa appeal costs around £400 at 2011/12 prices on average to process, although the actual cost will vary depending upon the complexity of individual cases. These costs are partly financed by the user fee for IAC appeals. From mid-December 2011 an oral hearing attracts a fee of £140 and a paper hearing is £80.

Benefits

There will be no additional benefits of option 0. However, family visitors whose initial application is refused will be able to appeal against the decision – this will have benefits to the individuals currently being issued entry clearance through the appeals process.

Option 1 – Remove the full right of appeal for those refused a family visit visa

The estimated volume impacts of the policy framework are translated into monetary values for inclusion in the cost-benefit analysis under two broad headings – direct costs and benefits on the one hand, and indirect, or “wider”, costs and benefits on the other.

The **direct** costs and benefits are those that are clearly and immediately related to the activities of those coming through the routes under consideration, and the operations of institutions and the UKBA in processing their applications. The direct costs include, for example, reductions in visa income. The direct benefits, on the other hand, are dominated by a reduction in UKBA and HMCTS processing costs as appeal volumes fall.

The **wider** costs and benefits are those more closely associated with economic output. The wider costs include a set of assumptions relating to the wider economy. The wider costs and benefits include the impacts on airline carriers and the UK tourism industry.

The following sections describe in more detail how costs and benefits have been calculated, and summarises the results. In general the method is straightforward: total costs and benefits are the product of a change in volume and an estimated unit cost or benefit, adjusted for the particular impact being considered.

Impact of behavioural change

There are uncertainties surrounding the assumptions and impact estimates, particularly around behavioural change by family visitors – some family visit visitors refused may make a new application for a FVV. Some visitors may also seek entry through other routes. Where relevant, we have modelled a range of scenarios to investigate the volume impacts under differing behavioural assumptions, and we have set out those which have a significant impact on our estimates.

Restrict full right of appeal for family visitors

Current policy

Currently, those migrant visitors who submit an unsuccessful application to visit a qualifying family member as set out in SI 518/2003 – a 6-month visa that allows a non-EU visa national time to visit

relatives in the UK – can appeal against the decision. In 2011, there were 452,200 applications for FVV, of which 370,200 were issued. Around 49,400 appeals were received by the First-tier Tribunal (Immigration and Asylum Chamber) against refusals of FVV in 2010-11, of which around 38% were allowed.³ This volume is expected to fall to 36,000 in future years due to the introduction of charges for FVV appeals in December 2011.

Proposal

The proposal will remove the full appeal right for all family visitor visas through the Crime, Communication and Courts Bill by January 2014. This proposal is also not intended to reduce the volume of applications for visits by family members, but will minimise the number of appeals arising from this route.

Impact

This proposal will remove the full appeal right in all FVV cases from January 2014. An appeal right will still exist on limited grounds (ECHR or race discrimination). We estimate that 10% of those who currently appeal will be able to appeal on limited grounds. It is estimated that although the legislation is expected to be active in January 2014, there will be a six month time lag before the volume of appeals is affected.

Removing the appeal right in itself is unlikely to affect the overall volume of visit visa applications (family or otherwise). However, there may be some increase in applications from those refused who will no longer be able to appeal. More repeat applications can therefore be expected from family members.

Those refused a visit visa can reapply as many times as they wish, whether they are a family member or other visitor. Removing the right of appeal is likely to lead to an increase in applications for either a family visit visa or standard visit visa as a result of those refused not being able to appeal. An estimate for the proportion of those who would reapply is not available, thus we have assumed that 50% of those who are no longer able to appeal would reapply. A range of 0% - 100% is tested in the sensitivity analysis. Using the central assumption, it is estimated that there will be 16,200 additional FVV applications, resulting in 12,750 additional grants. This will be offset by a fall in the number of allowed appeals of 12,150.

Table 1: Estimated impact of restricting Family Visit Visa Appeals

Application stage	Pre-Policy (2011)	Impact	Post-policy
Family Visit Visa applications	452,200	Increase due to reapplications by 50% of those refused permission to appeal.	468,400 (452k initial applications and 16,200 re-applications on either family visit visa or standard visit visa route)
FVV grants	370,200	Possible reduction due to difference in current allowed appeal volumes and grants from reapplications	370,700 from 2014 onwards (depending on behavioural response of migrants)
FVV appeals	36,000	Reduction of 90% from January 2014.	19,800 appeal in 2014/15 and 3,600 in future years.

Note – the tables above sets out the volume changes assuming a 50% reapplication rate in those who can no longer appeal. If we assume the reapplication rate is zero, there would be no change in FVV applications and a reduction in overall FVV grants; but if we assume the reapplication rate is 100%, there will be a significant increase in FVV applications and an overall increase in FVV grants – this could lead to additional benefits to the UK as discussed in the sensitivity analysis section below.

Costs

Direct Ongoing Costs

³ See: MOJ Statistics: <http://www.justice.gov.uk/publications/statistics-and-data/tribunals/annual-stats.htm>

Operational costs to the public sector

- **Increased UKBA case costs** – there will be an increase in UKBA case costs if those refused FVV reapply. The unit costs of processing a FVV case is £140. Assuming 50% of those refused permission to appeal will reapply, there will be around 16,200 additional FVV applications, at an estimated cost of around £18 (PV) million over 10 years.
- **Loss of fee income to MoJ** – A reduction in the volume of FVV appeals will reduce the fee income received by MoJ. Currently FVV are charged at £80 for a paper hearing and £140 for an oral hearing. Currently twice as many oral hearings than paper hearings are received. There is expected to be a six month time lag before the lost fee income is observed, due to the time taken to process an appeal. If FVV appeals fall by 90%, lost fee income will total £29m (PV) over 10 years.
- **Increase in Judicial Reviews** – It is thought that the volume of judicial reviews will increase as a result of the policy changes. This will have cost implications for UKBA and HMCTS. As volumes are unknown, these costs have not been quantified.

Benefits

Direct Ongoing Benefits – Public Sector

This proposal will lead to a number of direct and indirect benefits to the public sector. The main benefits are around reduced burdens on the taxpayer due to reduced costs of FVV appeals.

- **Reduced UKBA/Tribunal appeal costs** – there will be a reduction in the volume of FVV appeals which will bring savings to UKBA and the HMCTS. The total cost of a FVV appeal is £400 to HMCTS and £191 to UKBA. HMCTS estimate that around 50% of this cost is variable over the first five years of the IA, followed by 66% over the next five years as more resources are released. UKBA estimate that around 66% of the costs are variable. The variable cost savings are estimated to be £58m (PV) to HMCTS and £30m (PV) to UKBA over 10 years.

HMCTS estimate that 50% of the cost is fixed over the first five years and 34% fixed over the next five years. However, it is believed that only 50% of this proportion can be classed as a cashable saving. The remaining 50% is classed as an opportunity cost saving, in that the resource can be used for other cases but cannot be cashed. It is estimated that the cashable savings to HMCTS are £19m (PV) over 10 years, with a further £19m (PV) opportunity cost saving.

UKBA estimate that around a third of the cost is a fixed cost, although resources may be reused both within the UK Border Agency and HM Courts and Tribunals Service, in particular to increase the speed of throughput of appeals where there is a greater impact on the individual or the public (e.g. asylum, deportation or settlement). this will be reallocated to other areas of UKBA's business. The estimated saving is £15m (PV) over 10 years.

The total savings to HMCTS and UKBA are given below:

Saving to		£m (Present Value)
HMCTS	Variable	£58m
	Fixed - cashable	£19m
	Opportunity Cost (Fixed non cashable)	£19m
	Lost fee income	-£29m
UKBA	Variable	£30m
	Fixed - cashable	£16m
	Total	£112m

Numbers may not sum due to rounding

Operational benefits to UKBA

- **Reduced asylum costs** – there is evidence of abuse of the family visit visa as a means of seeking to remain in the UK. In 2009, 22,570 asylum applications were refused, 219 (1%) of which were claims matched to family visit visas issued on appeal. In 2011, 15,600 asylum applications were refused, 484 (3%) of which were claims matched to family visit visas issued on appeal. Removing the right of appeal is expected to reduce the volumes entering the UK intending to abuse the asylum system.

- **Increased UKBA fee income** – there will be an increase in UKBA fee income if those refused permission to appeal reapply. The fee for FVV applications is £76. Assuming 50% of those refused permission to appeal will reapply, there will be around 16,200 additional FVV applications, at an estimated benefit of £10 million (PV) over 10 years. Note – this benefit is uncertain and depends on the behavioural response of family visitors.

Wider benefits – wider UK economy

Impacts on the Private Sector

- **Air fares to carriers from a change in family visitors** – an increase in FVV grants will increase the amount of airfares paid by overseas visitors to UK carriers. The central estimate estimates a small increase in visitors; however the low option estimates a fall in visitor numbers. Costs falling to carriers outside of the UK are not in the scope of this impact assessment. Evidence on air fares from the Civil Aviation Authority suggests air fares to the UK are around £570 on average. Evidence from the Department for Transport suggests around 55% of carriers are UK-based. Using the assumptions set out above, we expect an increase in FVV grants of around 500 per annum in the central estimate. The estimated benefit of additional air fares to UK carriers is around £1 million (PV) over 10 years. The costs or benefits to the airline industry are considered transitional costs as in the longer term, the industry will adjust to absorb the effects of the demand shock and supply will adjust so there will be no long-term impact on UK economic output growth. The model therefore applies a scaling down factor to represent how the impacts fall over time.

- **Change in tourist spend by FVV in UK** – a increase in FVV grants will increase the amount of tourist spend in the UK by overseas visitors. Evidence on tourist spend from the IPS suggests family visitors spend on average £690 per visit to the UK. Using the assumptions set out above, we expect an increase in FVV grants of around 500 per annum. The estimated benefit of additional tourism expenditure to the wider economy is around £2 million (PV) over 10 years. As for the airline industry, this is considered a transitional cost/benefit and a scaling factor has been applied over time.

Note – the above costs are uncertain and depend on the behavioural response of family visitors.

Summary Costs and Benefits

A summary of the key monetised costs, benefits and transfers is set out below.

Table 8: Summary costs and benefits of proposal 2A.6

Costs	10 yr impact
<u>Costs</u>	(£m)
1. Increase in case working costs	£18
2. Lost Appeal Income to MoJ	£29
Total costs (discounted)	£46
Benefits	
1. Reduced FVV appeal costs to Tribunals	£95
2. Reduced FVV appeal costs to UKBA	£46
3. Increase in fee income from additional new FVV applications	£10
4. Change in FVV expenditure in UK	£2
5. Change in air fare expenditure	£1
Total benefits (discounted)	£154
Net Impacts (discounted)	£107

F. Modelling risks

Sensitivity Analysis

The key sensitivity is the proportion of FVV applicants that are refused that reapply for an FVV. There is limited evidence available on the behavioural response, so we provide a range of potential response of between 0% and 50%:

- Assuming a 0% reapplication rate for FVV, the NPV falls to £60 million over 10 years.
- Assuming a 100% reapplication rate for FVV, the NPV increases to £152 million over 10 years. In this scenario, there would be an overall increase in FVV grants to the UK, and potential benefits to the tourism industry and UK carriers.

Under each of the scenarios there is a significant positive impact to the UK, largely due to the reduction in FVV appeal costs to UKBA and the Tribunals.

Overall, we believe the monetised and non-monetised benefits of this proposal are significantly greater than the monetised and non-monetised costs.

G. Impact on businesses

Restrict family visit visa appeals

This proposal may result in a fall in the number of family visitors visiting the UK. This impact is very sensitive to the assumptions tested in the IA on propensity to reapply. It is possible that it could result in an increase in visits.

Any change in the number of visits will affect the tourist industry in the UK and transport companies involved in carrying people to the UK. We estimate that an increase in family visitor numbers, due to reapplications, could lead to an increase in airline revenue of **£1 million** (PV) over ten year.

Other industries in the UK affected by tourist expenditure are likely to include hotels, restaurant and leisure activities. As set out in the IA, we expect costs to these industries to amount to an increase in revenue of **£2 million** (PV) over 10 years. These costs are higher in the first year and fall over time. This is because we expect companies to adjust to changes in demand and reduce supply or reduce prices.

We do not believe that these costs to businesses should be included as regulatory INs as part of the Government’s One In One Out (OIOO) agenda. Guidance suggests that only direct impacts should be included as part of OIOO. The direct impact of these proposals is on family visitors who may no longer be able to visit the UK. The impacts on tourist businesses and carriers cannot be determined with any precision, appear likely to be small in either direction and are indirect impacts.

H. Summary and Recommendations

The table below outlines the summary costs and benefits of the proposed changes.

Table H.1 Costs and Benefits		
Option	Costs	Benefits
1	£46 million (PV over 10 years)	£154 million (PV over 10 years)
Source: UKBA Analysis		

The preferred option is option 1 – restrict family visitor appeal rights. The option is expected to have a positive impact on the UK economy and meets the government objectives to reduce the impact on the tax payer.

I. Implementation

The Government plans to implement these changes from January 2014. There are expected to be additional changes to limit the type of family member able to appeal against a FVV refusal from June 2012 to January 2014.

J. Monitoring and Evaluation

The effectiveness of the change in appeal rights will be monitored by the UK Border Agency and HM Courts and Tribunal Service.

K. Feedback

Feedback and findings from monitoring will be incorporated into the post-implementation review of the policy to inform future policy decisions on employment-related settlement.

Annex 1. Specific Impact Tests

Statutory Equality Duties

Equality Impact Assessment

A separate Policy Equality Statement is currently being drafted and will be published in due course.

Economic Impacts

Competition Assessment

No impact identified

Small Firms Impact Test

No impact identified

Environmental Impacts

Greenhouse Gas Assessment

No impact identified

Wider Environmental Issues

No impact identified

Social Impacts

Health and Well-being

No impact identified

Human Rights

See equality impact assessment

Justice

The expected impacts on appeals, as well as the impact on the Ministry of Justice have been included in the main body of the evidence base.

In summary, these are lost fee income of £29m (PV) over ten years, offset by savings in appeal costs of £95m (PV) over ten years, including £19m of opportunity costs.

The effect on the demand for legal aid is likely to be negligible.

Rural Proofing

No impact identified

Sustainability

Sustainable Development

No impact identified.