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Entry clearance: independent chief inspector's global review

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Entry clearance: independent chief inspector's global review



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IN DECEMBER 2011 THE INDEPENDENT CHIEF inspector of the UK Border Agency (UKBA) released three reports:

- an inspection of the UKBA Visa Section in New York;
- an annual report 2010-11; and
- a global review of entry clearance decision making.

This article will look at the global review of entry clearance decision making.

BACKGROUND

The independent chief inspector (ICI) was established by the UK Border Agency Act 2007 to examine the effectiveness and efficiency of the UKBA. The ICI is independent of the UKBA and reports directly to the Home Office.

Since 26 April 2009 the ICI also holds a statutory role of independent monitor for entry clearance refusals without rights of appeal, as detailed by s23 of the Immigration and Asylum Act 1999 and amended by s4(2) of the Immigration and Asylum and Nationality Act 2006.

The independent monitor is required to examine the quality of decision making in respect of fairness and consistency in cases with a limited right of appeal. This is to ensure correct procedures are carried out when making decisions, which is important to protect the most vulnerable applicants from wrongful decision making.

The section of the UKBA responsible for decision making in entry clearance applications is the international group (IG), which has 2,200 staff (approximately) in 387 locations throughout the world. The IG is split into six regional locations: Africa, Americas, Asia Pacific, Euro Med, Gulf, Iran and Pakistan and South Asia.

The UKBA began to redesign its global visa sections network as part of a wider programme of changes, which included introducing biometrics and the use of commercial partners. This redesign was initiated to improve the quality and consistency of the decision-making process and to create further efficiency and productivity, as well as resilience and

flexibility. This redesign is referred to as the 'hub and spoke business model' and entailed moving from small visa sections to larger regional hubs (processing centres).

There were 150 posts across the world in early 2007, working independently on all aspects of visa processing. By late 2010 there were 315 locations where applications could be registered (spokes), these spokes being serviced by 70 processing centres (hubs).

The UKBA uses two commercial partners to assist with processing visa applications: CSC Worldbridge Services and VFS Global Services.

GLOBAL REVIEW REPORT

The global review was based on an inspection made between December 2010 and June 2011 and examined almost 1,500 visa cases from every visa post where entry clearance decisions were made with a limited right of appeal. This included applications from those intending to visit the UK for a short time, for example, business visitors, short-term students and tourists. It did not include those visiting family in the UK, as those applications automatically receive a right of appeal.

Methodology

- for each decision-making post, 0.75% of files were randomly selected from cases refused between 1 July 2009 and 31 August 2010;
- where 0.75% of the number of files was less than eight files, the number of files selected was rounded up to eight; and
- where posts had less than eight files, all their files were selected for review.

Inspection criteria

To examine:

- whether policy and guidance was applied efficiently, effectively and consistently;
- consistency in quality of decision making; and
- customer service levels assessed in line with customer service standards and customer service commitments defined by the UKBA international group's website.

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'The independent monitor ensures correct procedures are carried out when making decisions, which is important to protect the most vulnerable applicants from wrongful decision making.'

ASPECTS OF THE REVIEW

The review covered many areas of the decision-making process and what follows are highlights of this.

Efficiency and effectiveness of decision making

Errors affecting decision quality were found in 72 posts (89% of posts) and 515 cases (35% of the sample). However, in nine posts (Belgrade, Bucharest, Copenhagen, Dusseldorf, Geneva, Havana, Port Louis, Rabat and Taipei) and 761 cases (52%), no issues in decision quality were found.

Failure to retain sufficient documentation on case files

201 cases (15%) were found not to have the requisite documentation, making it difficult, if not impossible, to assess whether the refusal decision made was appropriately informed by the information supplied by the applicant.

The poorest performing region in this respect was South Asia where 84 files were found to have insufficient documentation retained on them.

The poorest performing post was found to be Mumbai with 71% of cases having insufficient documents retained.

The UKBA has previously accepted recommendations for retaining sufficient documents on files and, in the UKBA's guidance issued in November 2009, it instructed entry clearance officers (ECOs) to retain any document relevant to the decision made in a case. The global review's findings appear to indicate that many ECOs are failing to comply with this instruction.

Misinterpretation of evidence by entry clearance officers

In 85 cases it was found that a common misinterpretation was in ECOs misreading

evidence concerning the level of funds available for a visit. In 29 of these cases (34%), there was concern that the error undermined the decision to refuse the application. The poorest performing region in this regard was found to be the Gulf, Iran and Pakistan.

Conflicting information

This is also referred to in the report with regards to the type of documents applicants are expected to provide with their applications, as there are a number of different sources for applicants to refer to, namely:

- the visa application form;
- visa application centre checklist;
- UKBA/UK visa websites; and
- commercial partners' websites.

Consideration of all the evidence

In 211 cases (14%), ECOs had not properly considered all evidence submitted supporting an application. Refusal notices given in these cases stated applicants failed to submit evidence to demonstrate they met particular requirements of the immigration rules. For example, evidence of income or employment. However, the evidence had, in fact, been submitted. In 84 (40%) of these cases, there was concern that these errors undermined the basis on which the decision for refusal had been made.

The poorest performing region in this respect was found to be the Gulf, Iran and Pakistan from which 65 (27%) of these cases came.

Use of the appropriate immigration rule

This was found to be an issue in 32 posts that were using the wrong immigration rules when reviewing a case. A typical example was found to be where applications for

a business visitor visa, which falls under paragraph 46, were being assessed under the rules for general visitors under paragraph 41.

The poorest performing regions in this respect were cited in the report as being Africa and EuroMed, with the poorest performing posts cited as Colombo and Moscow.

50 posts were, however, found to be applying the correct immigration rules in cases they considered, amounting to 793 cases (54%) where evidence had been appropriately considered by the ECO as part of the decision-making process. In these cases, consideration to all evidence represented was given, including close attention to detail, noticing inconsistencies/contradictions in material submitted and also in relation to evidence represented in previous applications and undertaking additional checks to verify information provided.

The report says it found the UKBA to be meeting its customer service targets in the majority of cases in both application processing times and in response times to complaints. However, it also says the overall quality in decision making 'leaves considerable room for improvement'.

John Vine CBE QPM (the current ICI) states in the report that the UKBA needs to do more in ensuring that staff adhere to its own issued guidance.

The principal method of ensuring quality is the entry clearance manager (ECM) review. Mr Vine writes, in the report, of his disappointment in finding 144 cases where there was poor quality in decision making, even though these cases had been reviewed by the ECM.

Mr Vine also suggests in the report that the UKBA strengthens its quality assurance process so that decision quality is improved consistently across all visa posts. He also highlights his concern in finding a significant proportion of cases where applicants were refused entry clearance as they did not provide information, which at the time of submitting their application, they could not have been aware would be required, ie the UKBA guidance did not mention it. Situations such as this were found in 235 cases (16%).

Where additional evidence is required to reach a decision, the report says the UKBA has a responsibility to the applicant to ensure that they are treated fairly. Mr Vine says how he was encouraged to find examples where entry clearance officers had used discretion to make additional checks before making a decision in an application.

The ICI has made three recommendations in his report that he says are fundamental to improving the quality of decision making in entry clearance cases.

THE RECOMMENDATIONS

The report makes the following recommendations:

- ensure applicants are provided an opportunity to submit further information when required by the ECO to make a decision (in circumstances where the applicant has followed published guidance);
- take immediate action to ensure relevant supporting documents are retained on file to show the decision-making process undertaken;
- strengthen quality-assurance methods used by ECM so the decision-making process becomes more effective and robust.

However, the ICI notes in his foreword to the report that the recommendations he makes have been made before, either by the

previous independent monitor or by himself in previous reports and they relate to issues that will emerge again in the future unless the UKBA properly addresses them.

UKBA'S RESPONSE

The UKBA has issued a response to the ICI's report and in it it accepts each of the ICI's recommendations. The UKBA does, however, point out in its response, that the ICI's recommendation for applicants to be given the opportunity to provide additional documentation (where applicants have followed published guidance and ECOs require further information to make their decision) is already the UKBA's current policy.

In relation to the recommendation for immediate action by the UKBA to ensure relevant supporting documents are retained on case files, the UKBA accepts the recommendation. Again, the UKBA goes on to say that they have taken action in this respect previously. They have also advised that where it is not possible to retain all such documents, for example where there is a lack of secure storage space, documents should be clearly referenced by way of notes/refusal notices. Adherence to the UKBA guidance is measured through regular ECM reviews of decisions.

In response to the ICI's recommendation that the UKBA strengthens the quality assurance methods used by ECMs, the UKBA accepts this recommendation. Again, the UKBA points out in its response that action has already been taken in this regard. The UKBA

DOCUMENTS REFERRED TO

- 'Entry clearance Decision Making – A Global Review' (1 December 2010-30 June 2011)
- The UKBA response document to the ICI's report, 'Entry Clearance Decision Making – A Global Review' (1 December 2010-30 June 2011)

also goes on to say in its response that it is in the process of establishing a metric to measure decision quality and it will set clear performance targets around this. The UKBA is currently reviewing the operation of the ECM review of visa decisions and it has stated in its response that it will share its findings of this review with the ICI before the end of the financial year.

As mentioned at the outset of this article, what has been covered here are highlights of the report and of the UKBA's response to the ICI's report. The ICI's report provides details of the assessment made, as well as providing full details of the inspection criteria used and breakdowns of the number of cases and posts involved. Both documents make for interesting reading and are freely available via the ICI's website: <http://icinspector.independent.gov.uk/>.

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