

Family Consultation
UK Border Agency
1st Floor Seacole
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6 October 2011

Dear Sir

Family Migration – A Consultation

This is the response of the AJTC to the paper “Family Migration – A Consultation”. The response focuses on the proposals to remove the right of appeal for decisions concerning family visit visas. The Council does not consider that it is appropriate to remove this right of appeal, and advocates an alternative approach to reducing unnecessary appeals, which also preserves access to independent adjudication in those cases that continue to require it.

Question 31: In what other ways could the UK Border Agency improve the family visit visa application process, in order to reduce the number of appeals?

The AJTC has long advocated a ‘Right First Time’ approach, and welcomes the willingness of UK Border Agency to seek advice on how to improve its application process in order to reduce the number of unnecessary appeals. The Council’s 2011 ‘Right First Time’ report ([http://www.justice.gov.uk/ajtc/docs/AJTC_Right_first_time_web\(7\).pdf](http://www.justice.gov.uk/ajtc/docs/AJTC_Right_first_time_web(7).pdf)) would act as a helpful starting point for suggestions on how to improve original decision-making.

At 1.23 of the consultation paper, it is stated: “we have published guidance for applicants on our website on what documentation they may wish to submit with their application”. The Council understands that every decision is different, and that it may not be possible to give a comprehensive list of what documentation will be sufficient in every case. However, it does appear that the guidance issued is vague and sometimes unhelpful, with the result that applicants are not always clear what information is actually required. The Council understands that case decisions from the Upper Tribunal substantiate this view.

1.26 of the paper then goes on to characterise as “misuse of the appeals system” a situation whereby information submitted on appeal should have been put forward as part of the original application. In view of the fact that the guidance is not clear or directive as to what documentation should be submitted, this characterisation appears unfair and unhelpful.

Instead, the Council suggests it would be productive to revisit the content of the guidance and assess whether it contains sufficient information to allow individuals to make a complete application, and whether it might be possible to include a check list of the types of documentation that are required. It would also be helpful for UKBA to undertake a review of recent successful appeals to determine common causes, particularly in connection with cases where insufficient or inappropriate information has been provided, with a view to improving the quality and precision of the guidance. This should help to increase the proportion of decisions that are made right first time.

Question 32: Beyond race discrimination and ECHR grounds, are there other circumstances in which a family visit visa appeal right should be retained? If yes, please specify.

It is explained that 63 per cent of allowed appeals are based on new evidence that was produced at appeal. In this class of cases, the best solution, and the most efficient for both applicants and UKBA, must be:

- First, to increase the proportion of decisions made right first time (see answer to Q31 for suggestions on how this might be achieved through better guidance etc); and
- Second, to allow applicants to have their case reconsidered (on production of the relevant additional information) where the reason given for refusal of an application by UKBA is absence of relevant information which, if provided, could lead to a different outcome. This would remove the need to submit a fresh application and pay another fee, and reduce the number of cases going to appeal.

These measures should substantially reduce the number of cases that would otherwise go to appeal under the present appeal regime. This leaves 37 per cent of appeals to be decided on a combination of new evidence and other factors, or simply on other factors alone. For this category of cases, there is a self evident argument in equitable treatment of the people and families concerned to retain an avenue of appeal against UKBA decisions.

The consultation paper suggests that there is evidence of a small level of misuse of the family visit visa as a means of seeking to remain in the UK. This is a separate issue, and does not constitute sufficient justification for removing the right of appeal. Instead, steps should be taken to improve the quality of original decision-making within UKBA, so that family visit visas are issued correctly, and so that unsubstantiated asylum claims are identified.

For these reasons, the Council considers that appeals against refusal of applications for family visit visas should be retained for all categories of applicant, albeit in the expectation that the measures proposed above should reduce substantially the number of cases going to full appeal. This approach should achieve the aim of reducing the number of appeals while also ensuring fairness for all applicants, including those who ultimately need to resort to appeal.

The Council would also like to note that while it welcomes the commitment to retain appeal rights on the grounds of race discrimination and ECHR grounds, it is not evident that there are ever likely to be significant numbers of appeals under these headings.

Yours faithfully

Richard Thomas CBE
Chairman