

# **Independent Monitor for Entry Clearance refusals without the right of appeal**

## **Report for January to September 2006**

**Immigration and Asylum Act 1999 Section 23,  
amended by paragraph 27 of schedule 7 of  
The Nationality, Immigration & Asylum Act 2002**

**March 2007**

**The Independent Monitor for Entry Clearance**  
(Refusals without right of appeal)  
Foreign & Commonwealth Office  
King Charles Street  
London  
SW1A 2AH



To **The Secretary of State for Foreign Affairs**

I am pleased to submit my Report covering the first nine months of 2006.

On one of my visits to visa issuing Posts overseas, an Entry Clearance Officer told me that had the visa operation remained as it had been when he was first involved some years ago, he would not have wanted to do similar work again. In those days, he explained, in a big and busy Post the apparent aim was to refuse as many applicants as possible. Nowadays he liked being expected to treat applicants courteously; he enjoyed people, not just shifting papers.

As Independent Monitor, I am pleased to record a significant improvement in the quality of UKvisas' work as it began to focus more firmly on balance and customer service. The comments from this experienced Officer confirm the marked shift in the way UKvisas approached its work in 2006 - "How many? How fast?" started to be replaced by "How good?"

*Linda M Costelloe Baker*

L M Costelloe Baker MBA  
March 2007

**Contents**

INTRODUCTION .....	4
Who needs a visa? .....	4
Where do you get a visa?.....	4
THE INDEPENDENT MONITOR FOR ENTRY CLEARANCE REFUSALS .....	7
Monitoring .....	8
Independence demonstrated.....	8
VISITS .....	9
Quito, Bogotá and Kingston .....	9
Chennai and Colombo .....	10
Dar Es Salaam and Kampala .....	11
Lagos.....	11
Key findings.....	12
Entry Clearance Manager training.....	13
INFORMATION FOR APPLICANTS - AND ENTRY CLEARANCE OFFICERS.....	14
Websites.....	14
Leaflets .....	14
Guidance for Entry Clearance Officers .....	16
FILE SAMPLE FOR JANUARY TO SEPTEMBER 2006 .....	17
Sample basis .....	17
Deep slices .....	17
Problems with providing the files.....	17
The sample.....	18
UKvisas overall performance .....	19
Refusal Notices - style and structure .....	19
Applicants who should have been told of full rights of appeal .....	20
Family visits.....	20
Long term students .....	22
Action, or inaction, by Posts.....	22
Action by UKvisas.....	22
Cases within the Independent Monitor's remit: Judgement, evidence and Rules ...	23
Additional information .....	28
Business visitors .....	29
Child visitors.....	29
Reporting back.....	30
Single entry endorsements.....	30
Quality pointers .....	31
CHECKS, COMPLAINTS and EXTERNAL SCRUTINY .....	41
Internal review .....	41
Complaints.....	41
The Ombudsman.....	43
Judicial Review.....	44
CONCLUSIONS .....	46
APPENDIX 1 : The relevant Immigration Rules .....	47

## **INTRODUCTION**

Although the Independent Monitor's Reports are for the Secretary of State and for the benefit of Parliament, Government and UKvisas, they are, I hope, read by people who are less familiar with the intricacies of visas. I am, therefore, starting off with an introduction to the process.

### **Who needs a visa?**

1. A person who is neither a British citizen nor a Commonwealth citizen with the right of abode nor a person who is entitled to enter or remain in the United Kingdom by virtue of the provisions of the 2006 European Economic Area Regulations requires leave to enter the United Kingdom. Entry clearance takes the form of a visa (for visa nationals) or an entry certificate (for non visa nationals). These documents are to be taken as evidence of the holder's eligibility for entry into the United Kingdom, and accordingly accepted as "entry clearances" within the meaning of the Immigration Act 1971.
2. Article 3 of the Immigration (Leave to Enter and Remain) Order 2000 requires that the entry clearance must specify the purpose for which the holder wishes to enter the United Kingdom and should be endorsed with the conditions to which it is subject or with a statement that it has effect as indefinite leave to enter the United Kingdom. The holder of such an entry clearance will not require leave to enter on arrival in the United Kingdom and, for the purposes of the Immigration Rules, is treated as a person who has arrived in the United Kingdom with leave to enter which is in force but which was given to the holder before arrival.

### **Where do you get a visa?**

3. The Immigration Rules say that an applicant for an entry clearance as a visitor must be outside the United Kingdom and Islands at the time of the application and must apply to a Post designated by the Secretary of State to accept applications for entry clearance for that purpose and from that category of applicant. A Post is a British Diplomatic Mission, British Consular Post or the office of any person outside the United Kingdom and Islands who has been authorised by the Secretary of State to accept applications for entry clearance. Any other application must be made to the Post in the country or territory where the applicant is living which has been designated by the Secretary of State to accept applications for entry clearance for that purpose and from that category of applicant. Where there is no such Post the applicant must apply to the appropriate designated Post outside the country or territory where he is living. The Foreign and Commonwealth Office publishes a list of designated Posts.

4. An application for an entry clearance is not made until any fee required to be paid under the Consular Fees Act 1980 (including any Regulations or Orders made under that Act) has been paid. The level of fees set is aimed at ensuring that entry clearance work is funded from applicants rather than by UK taxpayers and the fee is for the application process, and not for the visa itself. In the 2005-06 financial year, visa fees income amounted to £163,361,565.

### **Who issues visas?**

5. UKvisas was formed in June 2000 as a joint Foreign & Commonwealth Office and Home Office initiative designed to meet ministerial objectives of a 'fairer, faster and firmer' entry clearance process. The Secretary of State for Foreign and Commonwealth Affairs is accountable to Parliament on matters concerning the entry clearance operation overseas. UKvisas mission statement says that it is "the overseas arm of the UK's integrated border management. It aims to bring communities together and improve the UK's competitiveness as a destination for travel, trade, migration and investment through programmes which prevent immigration abuse, deliver value for money and earn public confidence".
6. UKvisas manages 162 visa sections around the world in Embassies, High Commissions and Consulates. Over 2,600 staff are directly involved in the visa operation of whom around 280 work in London. Visa sections around the world employ more than 700 UK-based staff and more than 1,600 local staff<sup>1</sup>.
7. UKvisas' Entry Clearance Officers assess applications against The Immigration Rules made under section 3(2) of the Immigration Act 1971 and frequently amended. These Rules constitute a statement of practice, as laid before Parliament by the Home Secretary, to be followed in regulating entry into, and stay of persons in, the United Kingdom. Entry Clearance Officers spend most of their time issuing visas to genuine visitors who meet the requirements of the Immigration Rules.
8. From January to September 2006, UKvisas received 2,175,703 applications. It issued 1,789,915 visas and refused 391,957 applications, an overall refusal rate of 18%. The refusal rate for non-family visitors was 14%, a 1%, reduction over the same period in 2005<sup>2</sup>.
9. UKvisas spent much of 2006 revising and refreshing its management information systems. Earlier performance indicators related to speed - "How fast?" rather than "How good?" Turnround times for applicants do matter and the Public Service Agreement target of a 24 hour turnround time for straightforward applications was stretching, but welcomed by applicants. The move to commercial partnerships meant, however, that whilst UKvisas'

---

<sup>1</sup> UKvisas key facts 2007

<sup>2</sup> UKvisas dashboard

offices might turn an application round in under 24 hours, the process as a whole from the applicant's point of view was taking longer. "How fast?" as a single performance measure, is one dimensional for a business that needs to work with competing and conflicting demands and pressures.

10. UKvisas new performance tracking system, the Balanced Scorecard, looks like being a success. It has been trialled during 2006 and will go live in April 2007. The Independent Monitor's assessments are included in a complex matrix of measurements covering Controls, Competitiveness, Costs, Capabilities and Confidence.

## **THE INDEPENDENT MONITOR FOR ENTRY CLEARANCE REFUSALS**

11. The role of the Independent Monitor for Entry Clearance Refusals without the Right of Appeal was set out in section 23 of the Immigration and Asylum Act 1999 and amended by paragraph 27 of schedule 7 of the Nationality, Immigration & Asylum Act 2002:
  - (1) The Secretary of State must appoint a person to monitor, in such a manner as the Secretary of State may determine, refusals of entry clearance in cases where there is, as a result of section 90 or 91 of the Nationality, Immigration & Asylum Act 2002, no right of appeal.
  - (2) But the Secretary of State may not appoint a member of his staff.
  - (3) The monitor must make an annual report on the discharge of his functions to the Secretary of State.
  - (4) The Secretary of State must lay a copy of any report made to him under subsection (3) before each House of Parliament.
12. I emphasise that Parliament decides which categories of visa applicant should not have full rights of appeal. UKvisas' role is to implement the laws set by Parliament and as interpreted by Government policies.
13. Applications refused and which do not have a right of appeal under section 90 or 91 as amended are;

### **Visitors**

- a visitor, other than a visit for the purpose of visiting a member of the applicant's family as construed in accordance with regulations<sup>3</sup>;

Non family visitors constitute just over half of visa applicants. The term visitor may apply to someone coming to the United Kingdom for a private visit perhaps as a tourist or to see friends; someone living and working abroad who comes here for a short time to transact business such as attending meetings and briefings, fact finding, negotiating or making contracts with UK businesses to buy or sell goods or services; someone who arrives at one UK port or airport and needs to be here for longer than 48 hours or to transfer to another port or airport to continue a longer journey, or someone coming here for privately funded medical treatment.

### **Students**

- someone who intends to follow a course of study for which s/he has been accepted and which will not last more than six months;
- those intending to study but who have not been accepted for a course;
- a dependant of a person in the two categories above.

---

<sup>3</sup> The Immigration Appeals (Family Visitor) Regulations 2003

14. Applicants in these categories do have limited rights of appeal on human rights and race relations grounds.

### **Monitoring**

15. My two year term of office started in April 2006; I am the fourth person to be appointed as Independent Monitor and the first to be appointed on a full time basis. I am expected to prepare two Reports each year for the Secretary of State, and to spend at least three months of the year visiting a range of Posts overseas.
16. The Independent Monitor's salary and expenses are met from visa application income, and do not impact on the UK taxpayer.
17. UKvisas provides administrative support to the Independent Monitor. I record here my appreciation for the help provided by UKvisas staff in responding to my questions on policy and practice, managing complicated travel arrangements and handling the sizeable annual file sample. They have now, deservedly, moved up in the world and are called The Independent Monitor Liaison Team and will be better resourced.

### **Independence demonstrated**

18. I provide my own office, though my address is at the Foreign & Commonwealth Office main building. I have a formal agreement with UKvisas that my mail is not opened by a member of its staff. That, and other simple administration agreements are currently being augmented into a fuller and formal Memorandum of Understanding between the Independent Monitor and UKvisas, which has responded positively to my concerns that the Monitor was, in many ways, seen and treated as being a part of UKvisas rather than an external assessor. The MOU is developing in a co-operative and constructive way and will set out obligations on both our sides.
19. In the meantime, I have been impressed by UKvisas' willingness to make sure that the Independent Monitor:
  - has a line of reporting that is direct to the Secretary of State;
  - is demonstrably independent of UKvisas;
  - has full editorial control of written reports.

## VISITS

20. The full time Independent Monitor is expected to spend at least three months each year on operational visits to Posts. My visits focus on the information that is available to applicants, the quality of decision making, and how Posts handle complaints and post decision correspondence.
21. In 2006, I focussed on Posts which reported a high percentage of their total applications being refused in cases with limited rights of appeal, especially those that have not been visited by an Independent Monitor. I added on other Posts in the region for comparative and travel economy purposes. From October 2006 to March 2007 I have visited 8 Posts and examined 465 files where visas had been refused including 269 cases that had full rights of appeal; although these are not within my remit, they provide a useful benchmark. I generally find that there is generally little discernable difference in the quality of decision making in cases with and without appeal rights.

### **Quito, Bogotá and Kingston**

22. Although Bogotá and Kingston handle not dissimilar numbers, Kingston has a high proportion of applications for family visits and settlement, and a high number of appeals. Quito and Bogotá have a foot in the student market and also a growing number of applicants with family who have regularised a stay in the UK and can now encourage visits.
23. Just before my visits to Quito and Bogotá, the Latin America Deputy Director of Visa Services had prepared operational review reports on those Posts. I thought that the reports were of a high standard and provided clear guidance on improvements for already well performing Posts. I suspect that what UKvisas has lacked in the past has been this regionally based senior management input. Strengthening managerial oversight has, I am convinced, been a great help in driving up performance.
24. In Quito, I noted a sharp increase in applications and recommended that a careful watch is kept to make sure that the Post is adequately resourced if the trend continues. The rise is thought to be caused by Ecuador's growing economy and the UK is well placed to take advantage if it continues to provide a high quality visa service.
25. I attended, and was invited to address, UKvisas Latin America regional conference. During my monitoring visit to Bogotá, which followed on from the conference, I paid special attention to the locally engaged support team to find out their views of the conference. They made useful and practical suggestions on how local staff can be helped to participate fully in such conferences. They enjoyed and valued getting together to discuss their work and that is especially useful for smaller and more isolated Posts.

26. I noted specific concerns about translator skills - for translator and Entry Clearance Officer. Translating well in an interview context requires far more than proficiency in two languages. I recommended that UKvisas looks into the possibility of formal translator qualifications for Entry Clearance Assistants. UKvisas agreed to consider the feasibility of a formal qualification for interpretation as it considers the issue of qualifications for entry clearance staff in general.
27. The visa regime in Jamaica was introduced because of concerns about immigration control. The Kingston visa team seemed to be rather out of date in its approach, but they were open minded and willing to engage. I was most concerned by the arrangements for interviews, which were wholly unacceptable, lacking in privacy and very noisy which meant that Entry Clearance Officers had to raise their voices giving a poor impression. I noted that a number of complaints were about Entry Clearance Officers "shouting" at applicants. The team needed to review whether interviews were necessary, rather than routine. I thought that applicants should be aware that a decision may be made on the papers and it was their responsibility to ensure that all relevant information was included in one go. I recommended that new Entry Clearance Officers should have an induction programme to introduce them to Jamaican life, including how savings accounts work and the many positives that exist. They should walk through the process as I did, to see what it feels like for the applicant. The team as a whole needed to pick up UKvisas' strengthened customer service agenda, recognising that providing a good service can work alongside robust decisions that are in accord with the Immigration Rules. The Kingston team has responded positively and constructively to the critical monitoring report.

### **Chennai and Colombo**

28. Pairing these two provided a useful experience of Posts at different stages of development.
29. In the 2005 file sample, I found that only 58% of Refusal Notices from Chennai were reasonable, but by the time of this visit at the end of 2006, that had risen to 100%. It had, therefore, achieved a remarkable turnaround in the quality of its work and I tried to assess the underpinning reasons so that lessons can be learnt for elsewhere. The Post was properly resourced to take account of a sharp rise in demand and was working in new high quality offices. Adequate managerial resource and ability meant that there was time for innovation and change. The two Entry Clearance Managers work well together providing both leadership and good management. The support staff were seen as an integral part of the business and worked to high standards. There was good use of risk management programmes which improved the quality of decision making, targeting resources where they were most needed and energising staff whose work had become more focused and varied in pace. Good leadership allowed and encouraged Entry Clearance Officer staff to develop, be innovative and take responsibility.

30. Colombo was a step behind. My impression was that it struggled to manage within its resources in 2005 and early 2006 given consular demands on the then lone and part time Entry Clearance Manager. Having seen how adequate managerial resource had turned Chennai around, I thought that similar improvements could be achieved in Colombo now that there is a full time Entry Clearance Manager in addition to one who divides time between visas and consular work. The team as a whole could use the combination of additional management input, imminent UKvisas' guidance and the impact of my own visit to kick start a programme of modernisation, with project based risk assessments that apply to Sri Lanka.

### **Dar Es Salaam and Kampala**

31. Dar Es Salaam and Kampala paired well for monitoring purposes if only to compare and contrast. I was struck by marked differences in the application experience:
- Applicants in Dar Es Salaam go to the High Commission to lodge an application. Around half will have completed the application on line beforehand and call on appointment, the remainder queue outside and are given numbered tickets for entry. All applicants are seen, sometimes briefly, by an Entry Clearance Officer at a counter.
  - Applicants in Kampala cannot complete the application on line but are expected to call at the office of commercial partner who takes the fee and delivers the application to the High Commission. If an Entry Clearance Officer decides that an interview is necessary, the applicant is issued with an invitation. Around 10% of applicants are seen by an Entry Clearance Officer for structured interviews.
32. I could see no real reason for the difference in method and recommended that UKvisas explains how it decides which application method should apply at a particular Post.

### **Lagos**

33. This was the first time I had a small team to work with me on a monitoring visit and it was also a joint venture in that one team member had been nominated by the Immigration and Nationality Directorate; the other two were from UKvisas Independent Monitor Liaison team. I am pleased to record that the venture worked well because it was a practice run for monitoring visits to the larger Posts where my model will be to draw together a small team for that piece of work. There was enthusiasm on all sides to try this approach and Lagos's open minded willingness to be the test Post helped to make this work.

34. We had a busy programme and were able to look into key aspects in more detail than I am able to on my own, especially in a Post the size of Lagos. I found that Lagos has put real effort into improving the quality of decisions and Refusal Notices and I thought their current performance was good. I did, however, find that complaint handling and responding to post decision correspondence was poor and I made a series of recommendations on how they could improve. I was concerned that it takes 8 months to fill a Entry Clearance Officer vacancy and thought that Lagos did not deserve its reputation for being a "difficult" posting because visa staff who were there found the work satisfying and interesting.

### **Monitoring visit Reports**

35. I prepare detailed Reports immediately after a visit; if I visit a series of Posts there is an overview which highlights issues for UKvisas to address and also separate Reports cover findings and recommendations that apply to a specific Post. I send the Reports to the Foreign & Commonwealth Office, the Director of UKvisas and to the relevant High Commissioner or Ambassador. UKvisas agreed to publish the overview Reports and its responses on its website and my key findings are also included in this Report.

### **Key findings**

36. Access to **information** is patchy and Posts pay little or no attention to differing information needs at different stages of the application process.
37. The application **experience** is markedly different for the person who queues outside a British Embassy or High Commission and is interviewed at a public counter than it is for the applicant whose case is handled by a commercial partner and determined on the basis of the application form (VAF) and supporting documents.
38. The move away from routinely interviewing, even briefly, all visa applicants, has improved the quality of **interviews** which have become focused on gaps in the application form. It is, however, vital that the physical interviewing arrangements allow adequate privacy and comfort.
39. Some Posts have an Entry Clearance Officer induction programme that ensures **familiarity with local life and customs**, whereas in other visa sections UK based staff seem cocooned in their offices and have little understanding of how the visa process appears from the applicant's point of view.
40. **Complaint handling** and analysis is generally poor. UKvisas is missing the opportunity of recording low cost customer feedback. It lacks control over the management of complaint handling; carries the risk of an allegation of malpractice not being brought to the immediate attention of the appropriate

staff; fails to highlight themes in post decision correspondence to address and improve performance.

### **Entry Clearance Manager training**

41. In January 2007, I joined in the first week of the 8 day course for Entry Clearance Managers who are expected to attend prior to taking up their appointment. The course is run by UKvisas' training unit in Croydon.
42. UKvisas works within the law and Government policies and I thought that there was a missed opportunity to make that clear. I recommended that the first day should open with a strong presentation on the Prime Minister's Initiative, thus setting a framework for the course. Some sessions needed refreshing to make sure they reflect current policy and practice, though work on that was already underway. I suggested fitting in more hands on work for the delegates, especially on the Balanced Scorecard session which was well received.
43. UKvisas expects new Entry Clearance Managers without entry clearance experience to attend the Entry Clearance Officer course first. I support that being a mandatory requirement. It is hard to see how someone who is fresh to immigration work can fully participate or understand the session on managers ensuring decision quality if they are unfamiliar with the Immigration Rules, Visa Application Forms and Refusal Notices.
44. I was told that there can be, for a variety of reasons, reluctance to attend the Managers course and recommended that attendance should be mandatory before a posting. Policy and practice are fast moving and Entry Clearance Managers need to be fully up to date before they start work. In any event, someone who has been one amongst many in a large Post will have different issues to think about and address if their new posting is to a singleton multi-hatted Post. I also noted that temporary Entry Clearance Managers have to be fully competent and familiar with UKvisas' policies in order to be truly useful during a short placement.
45. I thought that the course was well run and managed by a competent and engaging trainer. Delegates were enthusiastic, with large and small group discussions adding considerably to the usefulness of the course overall. Variations in delegates' backgrounds and experience worked well and it was good to see that the most experienced ones were open in commenting how much they had learned. Given the increasing amount of course content, it may be time to extend it.

## **INFORMATION FOR APPLICANTS - AND ENTRY CLEARANCE OFFICERS**

46. Information is important for all applicants, but especially so for those who do not have a full right of appeal. Good pre-application information gives them the best possible chance of completing the application accurately and enclosing the relevant supporting documents. Sound competent local advice is not always available and without accessible, understandable, consistent and accurate information, applicants with limited rights of appeal are more likely to run into problems, and may need to pay a further fee to make a second application. UKvisas is not as helpful as it could and should be in providing pre-application information.

### **Websites**

47. UKvisas is increasingly referring applicants to websites for basic information on how to apply for a visa. I continue to find, that information can be hard to access and contradictory. In July 2006, I recommended that all standard visa information is provided centrally from UKvisas' website and that Posts have no more than one or two pages to provide local and factual information, such as how to apply, how long the processing time will be, and the most recent local refusal/issued rates. UKvisas agreed in principle that it should be the central point of reference but noted that there were technical and local issues to be resolved. It is disappointing to report that the complete redesign of all websites has a proposed launch date of January 2008, some 18 months after the problem was drawn to UKvisas' attention. In the short term, UKvisas is working on centrally written content that Posts can use on existing websites and senior management are expected to conduct regular reviews of websites in their region.

### **Leaflets**

48. Not everyone has access to the internet, and some like to have information that they can take away and read. Having praised UKvisas' information leaflets, I was surprised to learn, in January 2007, of a proposal to stop producing them in their current format. The consultation paper included a selection of quoted comments, but all came from UKvisas staff, and there were none from its customers. It would be poor business practice to remove a basic source of information without undertaking a full consultation exercise and measuring the impact of proposed change. I do not, until there has been better consultation, support the recommendation that the printed leaflets should be abandoned in favour of web based information.
49. There can, however, be changes to make the print material more effective.
  - I can see no reason at all for a redesign and reprint to take place twice a year if the content is unchanged.
  - It might be possible to combine some leaflets to reduce the overall number.

- There should be centrally sourced translations of the key leaflets into the main languages according to visa demand and lack of web access. I note some current muddled thinking over leaflet translations. In one of my recent visit reports, I recommended that the key leaflets should be translated into the most used languages. In its response, UKvisas said that it was content for Posts to prepare the translations. I have found that where this has happened, variations in the translated text begin to emerge and, in one Post, the translation of an information sheet had been made back from Spanish into imperfect English, in order to help English speaking sponsors. There was a cupboard full of leaflets, completely unused.
  - I am not surprised that Posts report under use of the leaflets. In almost all of the Posts that I have visited, the leaflets have not been on display let alone freely available. I have seen boxes of them in dusty cupboards and boxes used as door stops. I have been told that if the leaflets are made available, people will take them in quantity and sell them; that they are in English so no-one will want them; that there is no rack to display them. It's six months since UKvisas accepted my recommendation to have a poster showing all of the leaflet covers with an invitation to ask for the right one; that invitation could, with a simple stick-on A4 sheet, be in the local language. I have not seen any sign that that poster is yet available, though there is a small dull grey one with a simple list of titles. Posts need to have guidance, and perhaps instructions, on how to display information to best effect.
50. The proposal was, I thought, internally focused and took no note of the needs of other organisations. I have, for example, recommended that The British Council is supplied with copies of the Student leaflet to hand to enquirers. British Council offices are increasingly being used as a source of advice as visa sections become closed to the public and it is important that they do not, in an attempt to be helpful, provide inaccurate information. Why should they bear the cost of printing off web based information?
51. Commercial Partners' offices are an obvious place to make sure there is a full set of UKvisas' print information. This would also emphasise that it is UKvisas, and not the Commercial Partner, which sets visa policy: I have expressed my concern that one Partner's website and print media gave the impression that they were more influential than appropriate. Print media is a form of advertising and the current high quality, professional looking leaflets show UKvisas in good light.
52. I recommended that UKvisas should research where potential applicants first try to obtain visa information and then provide information in an accessible, effective and cost effective format. The expressed view that current leaflets do not provide maximum benefit to Posts or customers is because the current leaflets are not being used as efficiently as they could be. In the meantime, I commend a practice noted in Port of Spain where one of the

standard interview questions is "Did you read the guidance leaflet for Visitors (or whatever leaflet applied)?"

53. When assessing information needs, the information that is currently least helpful is on what documents are needed to support an application. I am concerned that the lack of sound and consistent information leads to a significant number of applicants needing to make a second application because the first one included, for example, a statement of employment and salary rather than six months bank statements, or a savings account statement rather than current account. UKvisas does need to provide consistent and specific information on document requirements and **I recommend** that it does that.

### **Guidance for Entry Clearance Officers**

54. UKvisas has put significant time and effort into improving the quality of decisions and Refusal Notices. In January 2006, UKvisas and the Appeals Outcome Team of the Immigration and Nationality Directorate jointly produced a Quality Assurance feedback process to measure the quality of refusal notices and appeal bundles. The joint enterprise also arranged for Home Office Presenting Officers, who present UKvisas' position in appeals to the Asylum and Immigration Tribunal, to visit key Posts with the aim of producing recommendations on best practice for Refusal Notices and appeal bundles.
55. In July 2006, I recommended improvements to Refusal Notices to make them consistent in structure and style and to include sufficient detail to demonstrate that the applicant's case has been considered properly on its own merits. UKvisas agreed with this recommendation.
56. Findings from all of these sources have been incorporated into formal guidance which aims to help Entry Clearance Officers "win more appeals and achieve greater public confidence in decision making for applications with both full and limited appeal rights". The guidance took a long time to finalise, but was eventually issued in February 2007 and even then with an IT hitch which made the templates unusable, though it should be live in March. I will not see its full impact until I review files from April to September 2007 in my next but one Report.

## **FILE SAMPLE FOR JANUARY TO SEPTEMBER 2006**

57. As the Independent Monitor is expected to prepare two formal Reports each year, it seemed sensible to align them with UKvisas financial reporting years. I am, therefore, basing this Report on the first three quarters of 2006, and the next Report will cover October 2006 to March 2007. From then on, Reports will follow at six monthly intervals.

### **Sample basis**

58. I noted in the Report for 2005 that there were significant problems with the sampling mechanism. I am pleased to record that UKvisas has tackled the problem; the sample is more accurate and I have revised the sampling parameters so that I have a fuller picture of the range of visa work.
59. The sample for this Report was stratified into three month slices and I asked to see a 0.75% sample spread across the slices. I obtain at least one file from each Post for each slice, so I have seen at least 3 files from each Post. Whilst it is still a small number, it is better to see 3 files rather than 1, and for the larger Posts I can assess the quality of work from looking at 50 files rather than 450.
60. I have also, from the outset, placed emphasis on the smaller Posts. In 2006, when there were problems setting up some monitoring visits I noted that the lack of response was part of a wider attitude of separation. The smaller Posts are often overlooked compared with the big and busy ones and it's easy to see why, in return, they take can be tempted to take less notice of guidance from headquarters.

### **Deep slices**

61. In addition to the sample from across all Posts, I asked to see 100% of the applications that had been refused without full rights of appeal from 6 small to medium Posts: Lusaka, Port of Spain, Rangoon, Valletta, Wellington and Yerevan. My detailed assessments are in a separate report which UKvisas will use in its Balanced Scorecard performance measurement system. This report will be published on the Independent Monitor page of UKvisas website.

### **Problems with providing the files**

62. UKvisas notified Posts on 7 November 2006 that they should extract files in accord with a list that had been generated randomly and that the files must reach UKvisas by 18 December. For the 2005 file sample, only 45% of the files arrived within the set deadline. This year, with a shorter deadline, the

late arrivals had dropped to 21%, and not all of those were the Post's fault; files from Harare, Kuala Lumpur and Nairobi arrived back with them rather than reaching UKvisas in London. Chisinau confirmed that they had sent their files, but they still haven't arrived. Visa application files contain sensitive personal data and I am extremely concerned that it appears that the diplomatic bag postal system has allowed significant numbers of files to go astray. **I recommend** that UKvisas investigates this as a matter of urgency.

63. In addition to the files that are known to have gone astray, I have not been able to examine files from Panama City, Georgetown, Rabat or Windhoek, whose files may be in Pretoria as the visa office closed last year.
64. I note my appreciation for letters from Yerevan, Dubai and Casablanca, all of whom provided explanations for problems with retrieving the sample files. Three more, relatively small, Posts admitted that they had been busy before Christmas and short of staff. Some Posts did not provide explanations for lateness or for non arrival.
65. Getting the files in quickly is important as I shall be preparing Reports at 6 month intervals. UKvisas knows that we have to get into a simple routine for the file sample and set a realistic deadline for return even though that may stretch Posts at times. The system has worked better for this sample, and should work even more smoothly from now on.

### **The sample**

66. The search criteria for this sample have been set more finely and less than 1% of the sample cases (down from 4.3% last year) were not applications within the Independent Monitor's remit, such as applications for entry to a Commonwealth country or British Overseas Territory or to transit in the UK without entering, called a Direct Airside Transit visa.
67. The sample did include cases that should not have been there, for example applications that had been refused with correct information on full rights of appeal. The mistake in such cases is that the wrong box has been ticked on UKvisas IT case management system. Where this mistake is spotted before the files are sent to me, Posts are expected to provide the preceding file that is within my remit, and that happened in 30 cases - 2.4% of the sample. Some Posts provided the next file, rather than the preceding one, and as that affects the integrity of the sample, the importance of accuracy will be emphasised for the future.
68. To summarise;
  - 1% of the sample files could not be found - that is **administrative error** but no specific Post caused concern.
  - under 1% of the sample were not cases within the Independent Monitor's remit - that is **sampling criteria error**

- 2.4% of the sample were cases that had had full appeal rights notified correctly - that is **data entry error**
  - In 0.5% of the sample, the case file did not include a Refusal Notice and 0.8% of the requested cases were missing without any reason being provided. As Entry Clearance Managers are supposed to check the files before dispatch, these files cannot have been checked adequately and I class these as **managerial error**.
  - 2.7% of the sample did not arrive. The cause is unknown but included failures in the posting arrangements.
69. Guidance in 2004 confirmed that Visa Application Forms could be submitted in the local language and the applicant would be responsible for providing a translated Visa Application Form and supporting documents should the case go to appeal. Posts, rather than the applicant, are asked to provide translations for the files that I see and I am grateful for the help provided by almost all Posts in providing either full or note form translations.

### **UKvisas overall performance**

70. I have reviewed 1117 files within my remit, 49 files that I consider should have been notified of full appeal rights, 30 cases that should not have been part of the sample and 54 files that were associated with cases within my remit. I am satisfied that, overall, I have assessed a sufficient number and range of files to allow me to draw conclusions.
71. Assessing UKvisas' performance overall 86% of Refusal Notices were reasonable and provided correct information about the rights of appeal. This is a significant rise from 2005, when the overall rating was 76%. Two factors apply to the improvement: more accurate information on appeal rights and better quality Refusal Notices.

### **Refusal Notices - style and structure**

72. I noted a marked improvement in the consistency of style and structure over the nine month period under review. Although there were still a few patchwork Refusal Notices with different fonts and font sizes, most were better looking than those produced in 2005. Appearance matters and a professional looking Notice gives the impression that care has been taken over the application.
73. UKvisas' Best Practice guidance does not indicate that Entry Clearance Officers should sign the Refusal Notice, though the Diplomatic Service Procedures indicate that Entry Clearance Officers should make sure all parts of the form are completed and signed. My understanding is that there should be a signature, preferably decipherable, unless permission has been given on security grounds that Entry Clearance Officers should not be identified. UKvisas does not have a record of which Posts are exempt from

a personal signature. I am not satisfied that there is adequate managerial or policy oversight as practice is inconsistent. In the file sample overall, 45% of Refusal Notices did not have a signature; some were left blank and others had a number or an initial. Even within a Post, there was no consistent practice: some Refusal Notices were signed or the Entry Clearance Officer's name was printed and then initialled, whilst others had just the initials. **I recommend** that UKvisas provides instructions on signing Refusal Notices and clarifies the circumstances when a signature or name is not appropriate. No Refusal Notice should be left blank.

### **Applicants who should have been told of full rights of appeal**

74. I assess applications with limited rights of appeal, such as visitors and short term students. Both the former Independent Monitor and I have been concerned that an unacceptably high proportion of cases put into that category should have been told that they have full rights of appeal, such as applicants who wish to visit a qualifying family member<sup>4</sup>.
75. In the 2005 file sample, I found that 7.1% of applicants should have been notified of full appeal rights. As a result of the former Independent Monitor's recommendations in her Report for 2004, UKvisas issued firmer, more detailed and more helpful guidance on family visits on 24 May 2006 (AECIP<sup>5</sup> 41/06). This sample should show whether that guidance was effective, and I am pleased to say that it was. For the January to September 2006 sample, the error rate has dropped to 4.2%. I note that two thirds of the information errors happened before the guidance in May 2006, and only one third after that when an even spread would be 50:50.
76. I remain concerned that UKvisas tends to refer to these information failures as "applicants being denied the right of appeal". No Entry Clearance Officer can deny an applicant the right of appeal because the right is enshrined in law. The failure is to provide correct information, and **I recommend** that UKvisas makes that clear.

### **Family visits**

77. There is widespread misunderstanding of what a "family visit" when applicants have to tick a box on the front page of the Visa Application Form. Tourists on a family holiday, for example, can tend to think they are on a "family visit". There is no sign of the additional VAF questions that I recommended last year so Entry Clearance Officers still have to assess intentions very carefully. There is, in my view, an urgent need for the VAF to ask applicants if they intend to visit a family member and if so how are they related, rather than simply asking whether there is a family member in the UK.

---

<sup>4</sup> visiting a family member as defined by the Immigration Appeals (Family Visitor) Regulations 2003

<sup>5</sup> All Entry Clearance Issuing Posts

78. Sometimes the applicant adds the necessary detail.

### Case Study

One helpful applicant in Lagos, ticking the Yes box for having family or friends in the UK, added in very firm writing that he did not intend to see or spend time with them, he just wanted a quiet time and two weeks holiday.

79. The AECIP guidance said that Entry Clearance Officers should provide information on the full right of appeal in cases of doubt, unless they had evidence that the relationship was not as stated. I think that that practice in Lagos, where Entry Clearance Officers phone the claimed family member, is generally acceptable so long as there is a detailed file note to record the conversation and the information is included in the Refusal Notice. That allows the applicant the opportunity for rebuttal which is vital when the sponsor might be suspicious of the phone call and unwilling to provide information.

### Case Studies

In Lagos, the Refusal Notice said that the Entry Clearance Officer had phoned the uncle, who was unable to name his sister, the applicant's mother. The Entry Clearance Officer was not, given that evidence, satisfied that the applicant was related as claimed. The applicant's solicitors then wrote enclosing a letter from the uncle who denied that he had ever been contacted by the Entry Clearance Officer.

There is only one way to assess all of the evidence where there is a dispute, and that is by appeal. When Entry Clearance Officers contact the claimed relative and then set out in detail why such contact does not support that the relative qualifies under the Regulations as a family visit, I am content that the Entry Clearance Officer has acted reasonably. However, if the applicant then writes to the visa section with further evidence of the relationship, then I consider that an Entry Clearance Manager should review the decision. If refusal is still appropriate, then there should be a fresh Refusal Notice with information on full appeal rights.

I noted good practice in Sarajevo where the Refusal Notice started off by saying that the applicant had claimed a family visit to a cousin. In the interview, the applicant had described the person as a brother in law, and then as someone who is married to his father's uncle's daughter. The Entry Clearance Officer set that out and added "In view of this, your relationship is too distant to be considered as that of a family visitor."

I also noted good practice in Rangoon where the applicant wished to visit someone related through adoption. The Entry Clearance Officer noted that the applicant had been an adult when she had been given to her adoptive parents, and in the absence of any documentation he was not satisfied that the adoption was valid for the purposes of attracting full, family visit, appeal rights.

### **Long term students**

80. Students who wish to study for more than 6 months have full appeal rights if a visa is refused. I found only one **long term student** application that had, incorrectly, been given the wrong Refusal Notice.

### **Action, or inaction, by Posts**

81. I was pleased to see that some Posts take immediate remedial action on realising that an application that should have had information on a full right of appeal had been wrongly classified. I am, however, concerned that the Entry Clearance Manager in Lagos wanted to wait until I had reviewed the cases that he had found before contacting the applicants. His assessment was right and I would have been more impressed to see that something had been done about the errors as soon as they were identified.

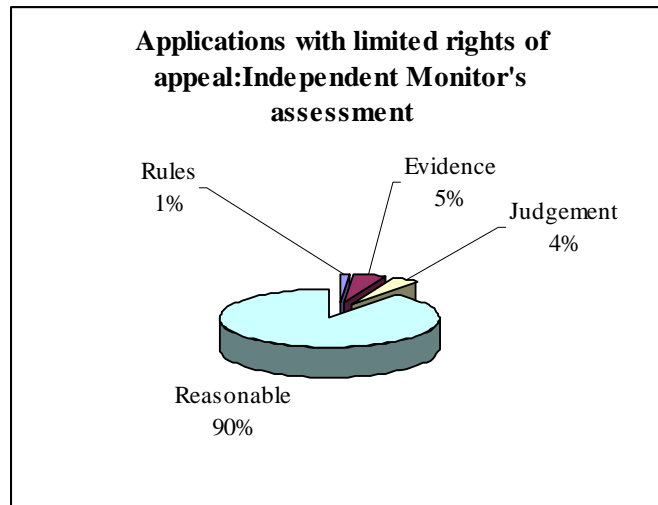
### **Action by UKvisas**

82. I returned 51 cases to UKvisas where I found that the applicant had not been advised of full appeal rights, including some cases that needed further clarification. UKvisas agreed that 49 applicants should have been told they had full rights of appeal. It asked Posts to take action in 42 of the cases, by contacting the applicant and inviting him or her to re-apply without having to pay a fee if they still wished to travel. In the remaining 7 cases the applicant had already re-applied and in 4 of the cases had either had a visa issued or had been refused with correct information on full rights of appeal. The remaining 3 applicants had been visiting the Post country and could no longer be contacted.
83. I repeat my concern that this is a very arbitrary outcome and only benefits applicants who have not already re-applied but who still wish to travel. It is also pure chance that I see a faulty Refusal Notice and I am still not satisfied that there is adequate attention being paid to quality controls at the time the Refusal Notice is issued.
84. In my Report for 2005, issued in November 2006, I returned to UKvisas 22 applications for family visits where the decision was based on an assertion that the documents were suspect, asking for UKvisas' policy on whether such applications can be refused with information on only limited rights of appeal. The cases were put on hold until UKvisas obtained legal advice on whether people applying for a family visit should be told of full appeal rights if the reason for refusal is that documents are not thought to be genuine. I am concerned that it took until February 2007 to obtain the advice though pleased that it supported my view that it is the stated purpose

of the visit that determines the appeal rights. I now expect UKvisas to take action on these files.

### Cases within the Independent Monitor's remit: Judgement, evidence and Rules

85. In order to make an assessment of whether decisions are being made fairly, I classified each of the 1117 cases that should not have attracted full rights of appeal as either **reasonable**, or that it was significantly faulty in terms of **judgement**, the use of **evidence** or the **Immigration Rules**.



These are very broad brush categories and are best illustrated by examples.

### Reasonable

86. I have recorded that 90% of the Refusal Notices were reasonable, a 3.7% rise over the 2005 file sample. That's not the same as saying that Entry Clearance Officers made the right decision in all these cases. The Independent Monitor's assessment is not a review by an independent tribunal so I do not substitute my own judgement in the cases I look at. A reasonable Refusal Notice is one which is in accord with the Immigration Rules, Diplomatic Service Procedures and AECIP guidance, and where the decision is not perverse and has been based, even loosely, on the evidence.
87. The Independent Monitor's role is not an easy one to grasp so I emphasise that if these "reasonable" cases had had full appeal rights, a different view of the evidence and a different use of judgement may have led to the refusal being overturned. Conversely, the decision in a poor quality Refusal Notice could be the right decision.

## Poor judgement

88. In my classification, I have been generous to Entry Clearance Officers because there were decisions that I would have re-written, or where I would have given the benefit of the doubt, or be less inclined doubt intentions. However, for me to record concern about use of **judgement**, the decision had to border on the perverse - a decision that no reasonably competent and fair Entry Clearance Officer would make.

### Case Studies

The applicant in Abuja applied for a visit visa to attend a management training course but was refused on the grounds that the start date of the course had passed. This was not the applicant's fault, the Entry Clearance Officer helpfully explaining that another applicant for the same course had sought to deceive by failing to declare a previous refusal and the need to check his documents had held up the assessment of all of the applications. The applicant tried again for a later course and this time was refused on the grounds that he had not mentioned his fellow applicant's earlier deception. Firstly, I was concerned that sensitive information about one applicant had been included in a Refusal Notice to another; UKvisas has accepted my recommendation that each applicant should have their own Refusal Notice. I am just as concerned that the applicant was refused a visa on the grounds that he had not provided information about someone else.

In Tirana, a 16 year old wanted to study English in the UK for 10 days. He was in the upper-intermediate level English class at a language school and had passed a Cambridge English exam. His school provided written permission for him to attend the English course though there were comments that he was not the best of pupils. His parents confirmed that they would spend 30% of their modest savings on their son's attendance at a summer school in England. The application was refused mainly on the grounds that the Entry Clearance Officer thought it was not credible that parents would spend that proportion of their savings on the English course. Parents are, however, often very willing to invest in their child's future, especially in countries where education is valued.

The applicant, in Almaty applied to undertake a 6 week course in English. In interview, she explained that the college had been recommended to her by her teacher and it was also cheaper than the others she had looked into. The Refusal Notice said that the applicant had failed to show evidence that she had compared cost and course contents and had failed to give a credible explanation of why she had chosen the college. The Entry Clearance Officer also noted that the college was unaware of the applicant's standard of English so he had made an objective judgement himself. Knowledge of English had been covered in the interview when the applicant explained that the college would assess her on arrival. She had also explained why she had chosen the course and a recommendation from a teacher seems a very credible reason to me.

89. To show that judgement is subjective, no matter how clear the underpinning rules and guidance, I note a case where I was concerned, but thought that the Entry Clearance Officer's judgement was not wholly unreasonable.

### Case Study

The application in Budapest was for a two week holiday staying with friends. The grounds for refusal were that the applicant's husband had been granted a visit visa the year before, when he had said that he intended to stay for 10 days to 2 weeks; he had stayed for 2½ months. The Entry Clearance Officer considered that the discrepancy in the husband's information and actions damaged the credibility of the wife's application, as she and her husband were travelling together. I thought this was harsh. The husband had not breached, so far as we are aware, the conditions of a 6 month visit visa. The issue to be tested was whether his stated intentions at the time of application were not true at the time he completed the application or whether, on arrival in the UK for whatever reason, he changed his intentions but was still able to maintain and accommodate himself without working. In any event, I am not convinced that there should have been such a close reliance on that issue so far as the wife's application was concerned. The decision was, however, not wholly unreasonable given all of the circumstances.

### Evidence

90. For me to register concern about the use of **evidence**, the Entry Clearance Officer had to have set out reasons that flew in the face of the evidence provided, or that took no notice of evidence obtained at interview or in supporting documents.

### Case studies

In New Delhi, the Refusal Notice said "You say that you have provided a tax form but there appears to me no such form in your application". But the tax form and other papers to confirm income were certainly in the file that I saw, dated before the application. They provided evidence of adequate income to support the planned holiday.

The applicant in Ekaterinburg had a letter from her employers who were funding a 2 month English Language course. The Entry Clearance Officer based the decision to refuse on the fact that the applicant did not name the companies she currently dealt with. The interview notes were brief and there was no record of the language used, as required by UKvisas' Best Practice guidance. If the Entry Clearance Officer thought that the letter from the company was not genuine, that should have formed the basis of the refusal. The applicant had travelled to the US in the past and provided evidence to support her request to study in the UK. I thought that significant paper evidence had been overlooked and that there was no good reason to refuse the visa.

In Dublin, the applicant was criticised for not having evidence of income from employment, when the employer's letter was dated the same month as the application and the purpose of the visit to the UK was for initial training. The Refusal Notice also incorrectly stated that the visit was for several days, when the application stated 2 days.

In Addis Ababa, "You have failed to produce satisfactory evidence of your spouse's regular monthly income. You have produced a statement of account for your spouse but this document does not give any history as to the transactions within the account and I am not satisfied that this one statement is a true reflection of his present financial position." The bank statement covered a two month period and showed a regular pattern of money flowing in and out: it looked very normal for the spouse's occupation as a self employed merchant. The applicant had also provided papers to show land ownership, listed the sources of their income and explained that she was well to do and had a very good life in her country so there was no reason to stay in the UK more than the two months planned. Her husband had visited the UK two years earlier, and had returned to Ethiopia.

91. Overall, I thought that Karachi had the poorest quality Refusal Notices in terms of standard paragraphs, bold statements and no linked evidence.

In Karachi a Refusal Notice said "Your plans (to stay with a friend for 30 days) are vague and I am not satisfied of your circumstances in Pakistan. Consequently I cannot be satisfied that the circumstances of your trip are as you claim and therefore that the period and purpose of your trip is as you state." There was no assessment of the evidence yet the applicant had provided a letter from his friend and a bank statement. And there's nothing on the VAF to say that applicants have to detail what they intend to do when visiting friends. In another case, the Entry Clearance Officer said "You propose a holiday for no particular purpose or event to visit a close friend" but visiting a close friend **is** a clear purpose for travel

92. In contrast to these poor quality Refusal Notices, I did note generally better practice which improved further throughout the year.

### Case Studies

In Dublin, the Entry Clearance Officer noted the percentage of time that the applicant was studying, noted the applicant's stated salary and said that it looked like full time employment. In the Refusal Notice he recorded that it looked as though applicant was working more than the 20 hours allowed by the Irish Government.

The applicant in Cairo ticked the 12 month visa box as a student on the front page of the VAF but later on said that he wanted to stay for 3 months. The Entry Clearance Officer spotted that the course length was 9 months, and found that the applicant's lack of knowledge of the course undermined his credibility as a genuine student. I think that's fair.

Good use of risk assessment checks can lead to crisp and to the point reasons for refusal. "Your hotel was booked using a credit card but the hotel have confirmed that the reservation was cancelled as the credit card was declined".

93. If the applicant fails to provide evidence that has been requested, then it is reasonable for the Entry Clearance Officer to take the failure into account. In New Delhi, the Refusal Notice said "You have not given an answer to question 6.7 on the application form regarding your monthly income. This is just one element of your overall application but it damages the credibility of the application". I thought that put the single failure into perspective.

### **Immigration Rules**

94. Compared with the 2005 file sample, more Refusal Notices mentioned the Immigration Rules, though not always in a way that would make sense to an applicant: a simple "paragraph 41 of HC295" explains nothing.
95. Although many of the Refusal Notices failed to mention the Immigration Rules, or did so in a general way that was not linked to the application, I registered concern under a **Rules** heading when the Refusal Notice was actually wrong.

### **Case Studies**

In Düsseldorf, the Refusal Notice said that holders of visit visas were not allowed to study. They are. The applicant originally applied as a visitor and been told that he needed to apply as student and pay a higher fee. He then applied as a short term student for a 3 week course and was refused, correctly, because the language school was not on the DfES<sup>6</sup> register. In a letter, he explained that he had phoned the Embassy and been told that he could apply for a visit visa and could take part in the language course whilst on a tourist trip. He applied again as a visitor and was refused because the dates were the same as his student application and the Entry Clearance Officer thought that the applicant had attempted to deceive in the interview by saying that he would not take part in the course whilst on the tourist trip. The applicant explained that he still wanted to go to the UK because he had paid for the flights. Although care needs to be taken when assessing a letter from an applicant, the information he said he had had from the Embassy is correct so I think weight can be placed on his account. I placed less weight on the interview response as it was irrelevant whether he wanted to attend the course - people on visit visas can undertake education should they so wish and the Entry Clearance Officer seemed to be unaware of that. There is no requirement for studies whilst on a visit visa to be at an DfES approved establishment but holders of visit visas cannot apply to extend their visas once in the UK visas, whereas holders of student visas can.

---

<sup>6</sup> Department for Education and Science

In Tirana, each of a large group of would-be students for an English language summer school had identical Refusal Notices. The applications were classed as Student, and therefore Immigration Rule 57 should have been used. In fact all applicants were refused under Rule 41 which applies to visitors. In identical Refusal Notices the Entry Clearance Officer said that he was not satisfied the applicant met the requirements of that Rule "because of some or all of the following", listing 8 bullet points. One bullet point noted that "You are aged 18 and above despite the Director noting that students were between 14 and 17". In fact 8 of the 10 applications I saw were from students who were *under* the age of 18 at the point of application. Each applicant had had to pay the visa handling fee yet they were all carelessly lumped together and given Refusal Notices that did not apply to most of them.

96. Most Entry Clearance Officers do appear to be familiar with the Rules which do cover complicated circumstances:

#### Case Study

I noted a good quality Refusal Notice from Amsterdam where the Entry Clearance Officer carefully and sensitively explored the relationship between the applicant and his UK based partner. They had had a religious marriage ceremony in Holland and the Refusal Notice, which was based on other grounds, set out the Home Office's position which is that a marriage has to be valid under the laws of the country in which it is contracted. The Entry Clearance Officer confirmed that the Netherlands does not recognise religious marriage ceremonies; that meant that the applicant did not qualify as a family visitor and did not qualify for the full rights of appeal. The Entry Clearance Officer had also gathered evidence which enabled him to rule out the possibility of a long term relationship which might have allowed the application to be considered on that basis.

#### Additional information

97. Some Posts ask applicants to complete information sheets in addition to the 57 questions on the VAF. Form VisaSUP1 in Port Louis, for example, asks applicants many of the questions that have already been covered in the VAF such as family details, replicating Section 3 of the VAF; if they have applied for entry to the UK, replicating Section 4; and the purpose of the visit, replicating Section 5. I do not understand why it is necessary to ask twice. This type of extra form is more commonly used for student applications but there appears to be little consistency between Posts on whether additional information is required and what that information should be. **I recommend** that as part of the promised redesign of the VAF, information that is genuinely needed should be captured on one form, and that Posts should not be able to add on extra requirements.

## **Business visitors**

98. Business visitors must qualify under the requirements of the Immigration Rules for visitors. The Entry Clearance Officer must be satisfied that the applicant:
- intends to transact business directly linked to his or her employment abroad;
  - normally lives and works abroad and has no intention of transferring the base to the UK, even temporarily;
  - receives a salary from abroad (but may get reasonable expenses to cover travel and subsistence during the visit).
99. Detailed guidance in the Diplomatic Service Procedures lists the classes of application that should be treated as business visitors, including those going to attend meetings, conferences, trade fairs, seminars etc., including guest speakers provided the conference or seminar is a single event that is not part of a commercial venture; those going to purchase, check details of or examine goods; those delivering goods from abroad, such as lorry drivers; those going to negotiate or sign trade agreements and contracts; those attending interviews including sports persons going for trials, entertainers going for auditions, and more.
100. UKvisas should wish to know how many Business Visitors are being issued with or refused visas, given the importance of this category to the UK economy. UKvisas cannot know that at the moment because visa sections are not always noting the specific sub-category on the management information system. The data entry error rate is very high: across the file sample as a whole I have found significant under recording of business visits: only 23 cases in the sample had been registered as Business Visitors, yet I found a further 80 cases, representing a significant under reporting. I note that Shanghai wrote to me to explain that an annual 53% rise in its business visitor numbers had been caused by changes to recording methods so at least one Post realised that there was a problem. There is no difference in appeal rights between business visitors and tourists but **I recommend** that UKvisas should remind Posts to classify visit visa applications carefully and accurately.

## **Child visitors**

101. New Immigration Rules came into force on 12 February 2006 aimed at protecting children. Entry Clearance Officers need to be satisfied that there are satisfactory arrangements for the care of children when in the UK, whether they travelling alone or accompanied by a named adult.
102. Karachi picked this up quickly and Refusal Notices used the correct Rule 46A in addition to Rule 41 conditions that apply to all visitors. Other Posts had the right idea and Refusal Notices commonly referred to care being taken to protect children's welfare though they should have set out the

specific Rule. In Tirana, the Entry Clearance Officer simply said that “your parent is unable to comply with the regulation of your application which is to provide your father’s passport, as he is out of the country”. The child welfare specific requirements of Rule 46A spell out the necessary measures clearly and helpfully and **I recommend** that they are used in detail for all child Refusal Notices.

### **Reporting back**

103. AECIP 34/2005, which refers to visa applications that are granted by the Minister of State following representations by an MP, says that “On return to their country of origin, a visit visa applicant must go to the Post by a stipulated date and show the Entry Clearance Manager their passport”. On my visits, I noted that this mechanism was also being used for other types of applicant, such as long distance lorry drivers on their first trip and short term students. I asked what powers exist to enable UKvisas to make such demands.
104. UKvisas confirmed that there is no power to require a person to return to a visa Post to show their passport. The aim of the guidance was so that an MP who had intervened could be advised of any failures by those they have assisted. That attitude is very worrying. First of all I find it unreasonable for UKvisas to try to place additional burdens on applicants who have sought assistance from an MP. Secondly, even if the visitor failed to attend the visa issuing Post, that does not mean that they have failed to leave the UK on completion of their visit - they may have left and gone elsewhere because there is no requirement under the Immigration Rules to return to the country of origin. Thirdly, UKvisas does not keep a record of how many applicants are told that they must report back so it cannot know if the provision is being misused. **I recommend** that UKvisas should reconsider the guidance, noting that there are no powers to enforce reporting back and failure to do so cannot be held against the applicant given the lack of powers.
105. More worryingly, the guidance itself is also being misused. In Kiev an application for a student visa was refused and a previous visitor visa cancelled at the same time on the grounds the applicant had not reported back to the Embassy after the visit. UKvisas agreed with my view that the reason for refusal was unfair; a Post cannot cancel an existing visa which has been activated and it had been an unfair reason for refusal. I hope UKvisas’ corrective action includes an apology and that Kiev is required to put right any other cases that have been handled that way.

### **Single entry endorsements**

106. In July 2005 the provision for a single entry endorsement on a visit visa was introduced. UKvisas undertook to monitor use of that to ensure consistency

and that was important as it constitutes a significant restriction on the normal visit visa which allows multiple entries over a 6 month period. In my visits to Posts I found inappropriate use of the endorsement, leading to visitors being stopped and questioned on entry to the UK as the endorsement should be exceptional. I asked UKvisas for the outcome of the monitoring and learnt, in 2006, that it had not taken place.

107. Having raised the problems and highlighted that the monitoring had been overlooked, I am concerned to note that when I asked again in early 2007, UKvisas replied that the monitoring had not been implemented and there had been no reported problems. I understand that the person who should have been undertaking the monitoring left and during a restructuring the work was not carried forward. These things can happen in a big and fast moving organisation but I cannot understand why it was overlooked a second time following my query last year. **I recommend** that UKvisas should implement the monitoring without further delay.

### **Quality pointers**

108. Although a high proportion of Refusal Notice were reasonable, I comment now on issues that could, if properly addressed, improve the quality of decision making. I include examples of good practice to demonstrate that there is much of that around.

### **Document verification**

109. It was good to see paper records of documentation checks and the focus on adequate assessments of documents is an important part of moving to evidence based decision making. It would help if forgery officers had formal, externally verified, qualifications and I have made a recommendation in that regard. From the file sample, I was concerned to see that some document verification reports have not been completed by the assessing Entry Clearance Officer. There is a tick box space to show what weight the Entry Clearance Officer places on the report, and space for a signature. Many of these were blank, for example in Dhaka. That caused especial concern when the report noted that bank documents had been found to be genuine but the reason for refusal was that the Entry Clearance Officer was not satisfied that they were.
110. I also noted some grudging acceptances of verification evidence, for example in New Delhi, when the bank check confirmed that the account was genuine and the balance tallied with the statements provided. The Entry Clearance Officer should have ticked the box that he was satisfied, on the balance of probabilities, that the documents were genuine, but he noted instead that he could draw no conclusions. Sometimes, visa staff contradict the verification report's findings, for example a document assessor called a bank which confirmed that the bank statement was correct, yet the assessor decided that it was not because the balance was consistently increasing, the cheques were in date order and there was no evidence of foreign

transactions. The balance did rise by £2,000 (27%) over a six month period and continued to rise in a similar fashion until the date of the application, but that was unsurprising when the bank confirmed that it was a savings account rather than the applicant's business account. I was not satisfied that the assessor or Entry Clearance Officer had read the supporting papers carefully enough.

111. I was concerned to see to see, even late in the sample period, Entry Clearance Officers referring to documents being "forged", especially when earlier in the same Refusal Notice the Entry Clearance Officer noted a view that the documents were "not genuine". An opinion that a document is thought to be not genuine, when accompanied by the reasons underpinning that view, is reasonable practice. Stating forgery as a fact, without the appropriate burden of proof and the applicant having the chance to refute the allegation, is not reasonable practice.

### Case Studies

I noted good practice in Chennai. "The copied tax return you have provided contains a poor tax authentication stamp which has an undefined edging and a mis-aligned date band. I am aware that documents such as copied tax returns are generally freely available from agents and other sources and given the poor quality authentication stamp on the form you have provided, I am not satisfied you are employed as claimed and you receive the income you have specified".

112. When I comment on the wide variation in the quality of Refusal Notices, I am often told that it's easy for smaller Posts to achieve high standards but that big and busy Posts are too pressed for time. Chennai is the fifth busiest Post in the world: volume and quality can go together

I also liked a Refusal Notice in Karachi in which the Entry Clearance Officer said that this was the fourth set of almost identical documents that he had seen and he was satisfied that it was a package of documents that had been bought. That sets the evidence and reasonable conclusions out fairly and precisely.

### Documents: retaining

113. I share one Entry Clearance Manager's file note plea, which was to keep documents as he could not sign the Refusal Notice off because he could not see what the Entry Clearance Officer saw. I, too, have problems making a thorough assessment when the applicant's documents have been returned with the Refusal Notice. **I recommend** that UKvisas confirms and amplifies Best Practice guidance (3.16.1) which says that Entry Clearance Managers should ensure that only documents that are specifically required are retained. I specifically require to see documents that underpin the reasons for refusal, and so might a judicial body as part of an appeal or judicial review.

## Money

114. The assessment of means, what is available and how much is needed for maintenance and accommodation in the UK, forms the basis of most Entry Clearance Officers' decisions. To a certain extent, it is the easy option because there are numbers to assess and bank statements to read. There is also a strong emphasis on funds in the Immigration Rules. Under Rule 41, the requirements to be met by a person seeking leave to enter the United Kingdom as a visitor include that he: *will maintain and accommodate himself and any dependants adequately out of resources available to him without recourse to public funds or taking employment; or will, with any dependants, be maintained and accommodated adequately by relatives or friends; and can meet the cost of the return or onward journey.*
- “You have sought to falsely enhance your financial circumstances” appeared in a number of Refusal Notices from a variety of places. Not only do I wince at the split infinitive, but the Entry Clearance Officer needs firm evidence to make such a firm statement. If there are grounds for suspicion that documents are not genuine or that bank statements may not be an accurate reflection of the applicant's financial circumstances, then that is what should be said, and why.
  - “You have not explained the provenance of the funds.” Where does the VAF say they have to? If someone provides bank statements which are thought to be genuine, showing healthy balances with money moving in and out, and enough funds to pay for whatever length of holiday planned, states their occupation and the credits to the account are in accord with that occupation, I do not understand this routine and frequently seen comment about not explaining where the money comes from. If it is vital that sources of income are known before a decision can be made, then it would be much fairer to make that clear on the application form.
  - “If you were to utilise the funds from your business account this would most certainly have a detrimental affect on your business as a going concern”. How could the Entry Clearance Officer prove this strong statement? What about investing for growth? The statement is no more than guesswork and should not be part of the reasons to support a decision.
  - “Why keep your money at home when it could be earning interest?” shows a lack of understanding of local practices in that banks are often not trusted and that under Islamic law the receipt and payment of interest is forbidden.
115. I am also concerned by some unfair assessments of means when there is sound documentary evidence.

### Case Studies

In Lagos, a sponsor's bank account showed that it was overdrawn, but the balance was still well under a confirmed, and high, overdraft limit. To have a personal overdraft of that size from a UK bank confirms sound financial status and there was obviously another account as transfers of funds were shown in the statement. To the Entry Clearance Officer, the sponsor could "not afford to have a friend to stay because the account was overdrawn". I looked at **available** funds, and thought that there was plenty left to provide for a one week visit.

116. The apparent emphasis on having to see months of bank statements means that Entry Clearance Officers can overlook perfectly adequate evidence that shows that an applicant can meet the requirements of the Immigration Rules.

In Nicosia, a prospective, and apparently well off, Chinese student at college in Cyprus, was refused a visit visa for 7 days in which she wished to research UK universities, on the grounds that she had provided a statement (showing a closing balance of more than €7,000), rather than six months of bank statements.

117. I note some lack of awareness of the way UK financial services accounts work. For example, the sponsor for an applicant in Rangoon provided a copy of a bank statement showing a healthy and adequate level of funds. It was called *Bond issue - 3 year fixed* and the Entry Clearance Officer thought that meant that money could not be withdrawn rather than the interest rate being fixed for the specified term.
118. I also found some confusion over what is meant by the applicant *not having recourse to public funds*.

### Case Study

A Russian applicant wanted to stay for two weeks with a UK pen friend (visit sponsor) met over the internet. One of the grounds for refusal was that the source of the sponsor's funds could not be determined so the Entry Clearance Officer was not sure that the applicant could be accommodated without recourse to public funds. In fact the sponsor did receive public funds on a regular basis and that was clear from his bank statements. He was also able to save regularly and had a significant amount of money in a savings account, more than enough to pay all of the applicant's costs for a short visit. I wondered whether the Entry Clearance Officer misunderstood the Immigration Rules. The fact that a sponsor might be reliant on public funds does not count against them if they have chosen to save rather than spend, or if they have other sources of income and have provided adequate evidence. In any event, there's very little additional expenditure if you have friends to stay - a bit more on food perhaps and possibly a little more on energy costs. What matters is that there is *no additional* burden on public funds caused by the visit.

119. I do think that it is reasonable for Entry Clearance Officers to doubt an intention to visit for a short period if an applicant intends to spend all of his savings, sometimes amassed over a period of years, to take his entire family on a proposed short holiday to the UK.

### **Out of date**

120. I found only two Posts using out of date Refusal Notices. Dar Es Salaam and Bucharest were using, in mid 2006, old Notices which do not provide information about Human Rights and Race Relations appeal rights.

### **Plain English please!**

121. The purpose of the Refusal Notice is to explain the Entry Clearance Officer's decision to the applicant, and to make it fit for purpose the evidence and conclusions need to be expressed plainly and simply. There were signs of improvement in this sample and far fewer of the very strange wordings I saw last year. I still think that Entry Clearance Officers need to watch out for over complication and there are certainly plain language versions of:

- I can only assess your mutual knowledge in a subjective context.
- This leads me to doubt the veracity of your assertions.
- I am led to doubt the authenticity of the documentary evidence adduced and as such cannot place reliance on it.
- You have failed to complete pivotal areas of Section 6.
- The documents appear to emanate from your daughter.
- This letter is not endowed with any evidential value and in lieu of credible corroborating evidence I am not satisfied that you are employed as claimed generating the remuneration claimed by you.
- The provenance of the funds depicted is not evidenced allied to other financial commitments.
- The scenario prescribed by you . . .

### **Refusal Notices: joint**

122. I found more examples of inappropriate disclosure of personal data when one Refusal Notice is used to cover a number of applicants. In Colombo, a shared Refusal Notice confirmed that one of the applicants had failed to declare previous immigration history but attributed that to the wrong applicant. In another from the same Post, a husband's income was disclosed to his wife - not always acceptable. In Mumbai, joint Refusal Notices included specific information about applicants' bank accounts which was disclosed to fellow travellers. Foreign & Commonwealth Office policy is that the Data Protection Act applies to its work overseas so disclosing such information to fellow applicants may constitute a breach of the Act's requirements. UKvisas has accepted my recommendation that each applicant should have their own Refusal Notice and I make no further recommendation at this stage. I do, however, ask Entry Clearance Officers to take great care about not disclosing personal data to other than the applicant.

123. Separate Refusal Notices are especially important when the parents' applications may attract full appeal rights, but the dependent's does not if the parent's application has been refused. I noted good practice in Rome,

where the Entry Clearance Officer wrote "Your parent applied on your behalf for you as a dependent. Your parents have been refused so I am not satisfied that you are a dependent of a person holding a valid entry clearance". I commend a Refusal Notice from Singapore for a child wanting a tourist visa - "Your parents' applications have been refused and you are a minor and would not be able to undertake this trip without them."

### **Reasons: unreasonable**

124. There are still a few of these, though less than in the 2005 file sample. In Hanoi, the applicant wanted to visit her god-daughter. The Entry Clearance Officer added a note to the end of record of the interview and then included his views as a reason for refusal - "based on your appearance and hearing disability, I am not satisfied that you do not intend to seek medical treatment in the UK". This assertion was not put to the applicant, nor was the Entry Clearance Officer's written view that the applicant looked older than 57. Appearance and disability should not count: the applicant was apparently "very deaf", but the Entry Clearance Officer should not include a reason based on wild guesswork when he had had the opportunity to put his concerns to the applicant.
125. In Islamabad, the applicant provided 2 passports, issued just 2 weeks apart. As one reason for refusal the Entry Clearance Officer noted that the applicant had failed to provide evidence that he had exceptionally and legally been permitted to hold 2 passports, as that was against Pakistan regulations. In the next bullet point reason, the Entry Clearance Officer went on to state "The fact that you have obtained two valid travel documents without prior permission". Reason 1 was fine, in that the responsibility lies with the applicant to explain why he had two passports, but Reason 2 was inappropriate because the facts had not been established. In a subsequent application, the applicant explained in detail that in 2004 he had needed to get a second passport as the British visa processing process was lengthy and he had needed to travel abroad whilst his UK visa application was pending.

### **Standard paragraphs**

126. There is a fine balance between using standard paragraphs to improve consistency and using them without adequate attention and thought. I continue to be concerned by carelessness when standard paragraphs are not tailored properly. In Doha, 2 of the 3 Refusal Notices in the sample said that the Entry Clearance Officer was "not satisfied that the applicant would be maintained adequately by family or friends", but the applicants had stated that they knew no-one in the UK; that was not in doubt nor was it raised in the interview. In Lagos, one Refusal Notice said "You have submitted (specify document) to support your application".
127. On the other hand Accra has taken steps to minimise one problem. In a note accompanying the file sample an Entry Clearance Manager explained that the original Refusal Notice referred to the applicant's circumstances in Ghana rather than Cote D'Ivoire. I was pleased to see that the Entry

Clearance Manager had arranged for a corrected Refusal Notice to be sent to the applicant and that the Accra office has set up new templates which require Entry Clearance Officers to select the country of origin so that Ghana was not the automatic default. The response to the mistake would have been even better if the letter that went out with the corrected Refusal Notice had included an apology for making the error in the first place. I also note that an Entry Clearance Manager had not spotted the error when the Refusal Notice was reviewed at the time.

**Students: length of course**

128. In 2004, (AECIP 47/04) Entry Clearance Officers were reminded that students following modular courses should be granted full rights of appeal when the total length of course is more than 6 months. I am pleased to say that I found no case where this instruction had been overlooked.

**Students: learning English in the UK**

129. Applications for short term English Language courses are often refused on the basis that the applicant does not know enough about the course. In one interview, an applicant was asked where the college was and he replied he did not know where but it was "Wembley and not the centre but not far from the centre of London". In my view, that is adequate knowledge of location but the Entry Clearance Officer disagreed.

**Case Study**

In Tbilisi, the applicant in interview explained that the college he wished to attend had levels of study and he wished to attend the elementary level. He explained that he would be tested on arrival and the tutor would decide what he needed. He noted that the college aimed to give a full knowledge of grammar to the student. He would be given homework twice a week and the college would compare how well he did. Despite all of this detail, in the Refusal Notice the Entry Clearance Officer used a standard paragraph which claimed that the applicant had "little knowledge of the course he wished to attend". I thought that was unreasonable.

130. Starting out on a career path is not the only reason that people want to learn English in the UK.

**Case Study**

"I teach English and the course has many advantages. I would be learning English in England in a natural environment. It is tailored to my needs and is designed for overseas teachers. I would see the culture and style; sometimes my students ask me about England and I am shamed that I don't know about real life: I read it from books only". To this the Entry Clearance Officer noted that the applicant had not made any recent attempts to attend courses within Mongolia, which completely missed the very believable and detailed account of why the applicant would benefit from the course she had applied for. I thought that was unreasonable.

131. I do find that there is undue suspicion about parents' and close relatives' intentions when they are put forward as helping with funding. A good grounding in English is so important in worldwide business that I can understand why parents are willing to make sacrifices in their wish to help a child on the ladder to success. UKvisas accepted my recommendation that the simple existence of English language courses in the applicant's home country should not be a reason on its own to refuse a visa, so I make no further recommendations on this type of application at this stage.

### **Tourists**

132. Lots of people who want to visit the UK are tourists. They have no family or friends here, they have no business contacts, they simply want to visit countries which spend a lot of money trying to attract visitors because visitors are good for the UK economy.

133. Entry Clearance Officers can use some ridiculous reasons when refusing visa for tourist visits.

- "You wish to go to the UK for a holiday. You have never previously undertaken any foreign travel before and I can see little reason for this trip". This is a common reason for refusal but there was a first time for everyone who has gone abroad on a holiday and not having done it before is an acceptable reason for travel.
- For an applicant who had travelled before, one Entry Clearance Officer said "I have noted you have taken visas for other countries which are nowhere near the UK. I am, therefore, not satisfied that you have established a credible reason for your visit."
- One Refusal Notice stated "You do not have a sufficient command of the language for the purposes of tourism." Well if knowledge of the language was a requirement for travel, that would certainly stop lots of British citizens going on their hols.
- In a standard paragraph, Entry Clearance Officers often note "You plan a holiday for no particular purpose other than sightseeing", but that's what the UK is famous for, sights worth seeing.

134. I did note a sensible assessment of previous travel by an Entry Clearance Officer in Moscow. The application for a 3 day visit for tourism was refused on the grounds that the applicant was not a genuine visitor because he had already made 4 tourism trips to other countries in a 5 month period and was in full time employment. The applicant re-applied as a business visitor and the visa was granted.

135. Each of the four countries of the UK is famed for its scenery and historic sights, but not everyone who travels for pleasure has a fixed and firm

itinerary for what they want to do. Some degree of knowledge is, however reasonable.

### Case Study

In Abu Dhabi, the Entry Clearance Officer said "It is not necessary to know any tourist sights but I expect you to have some idea of what you wish to see and do especially given that you are prepared to spend 19 months salary on a short holiday." This was based on an interview, and I thought the use of judgement was reasonable.

136. Where there is no interview, there needs to be more care about assessing the applicant's intentions.

### Case Study

The Refusal Notice stated "You have little or no idea what you plan to see or do". The applicant was not asked as the Post does not conduct interviews and the application form only asks *Why are you going to the UK?* The applicant entered "Annual Leave Vacation", a perfectly sensible response.

137. Those who are first time travellers, from countries such as India where increasing wealth is allowing travel, tend to use tour companies who do all the planning for them. In those circumstances, the traveller has to comply with a very tightly organised itinerary and it seems unfair to criticise them for not knowing whether it's London on Tuesday and Paris on Wednesday, or the other way round.
138. I find it unfair for Entry Clearance Officers to use as a reason for refusal that the would-be tourist who plans to visit, for example, France and Spain as well as the UK, has not already obtained the visa for those countries before applying for the UK visa. Given the need to provide a passport in order to obtain a visa, only one application can be made at a time and it's irrelevant which comes first.

### Visits to friends

139. If an applicant wants to visit a close friend I do think that it's a little naïve to worry about a list of tourist sights.
- One applicant said that on her proposed 4 month visit to her fiancé she would "just live as a housewife", yet she was criticised for not researching the UK's background. I suspect being a housewife for 4 months was all she wanted to do and the Immigration Rules allow that.
  - An applicant in St Petersburg said "I just want a holiday, my friends live near the seaside" to which the Entry Clearance Officer wrote "you have not named any places you will see". But the applicant had - the seaside.
140. At worst, a Refusal Notice can make no sense at all.

## Case Study

The Entry Clearance Officer wrote "I do not find it credible that you would stay in a hotel in Cirencester far from your friends in Surrey and Kent". But the applicant had said that he was going on holiday and to see friends; he explained that he did not want to put a burden on his friends for the whole 28 day visit. The biggest problem was that the Entry Clearance Officer had not taken in the address of the hotel, which the applicant had put correctly in the application form. According to its website the hotel is "*Charmingly located in Finsbury Park, North London, boasting an excellent location nearby the main local transport links for central London and Heathrow airport*" - a perfect place to stay. I have absolutely no idea from the papers, including the interview record, why the Entry Clearance Officer thought that the hotel was in Cirencester. From the correspondence on the file, the applicant thought that he had been told that he was not allowed to stay at a hotel if he wished to see friends. UKvisas has agreed to offer the applicant a further application free of charge and I hope that is accompanied by an apology.

### Working or visiting?

141. A case from Port Louis raised interesting issues. The applicant had recently graduated and had been offered a job with a UK company that was about to set up a highly skilled manufacturing organisation in Mauritius. The company wanted the applicant and three others to attend their UK factory for initial training. At interview, the applicant explained that the company intended to pay an allowance for food. When asked how much, he said £5 per hour for 5 or 6 hours training a day. The Entry Clearance Officer refused the application on the grounds that that sounded like paid work. I thought that was reasonable. I was also pleased to see that when the company contacted the visa office the Entry Clearance Officer wrote a calm and factual reply explaining that the case had been reviewed by the Entry Clearance Manager and that the applicant could re-apply addressing the concerns raised in the Refusal Notice. The employer then asked for the Refusal Notice to be sent to them directly but there was no copy of the visa office's reply on the file. The Notice should not, of course, have been sent without the applicant's permission.
142. In Pretoria, the Entry Clearance Officer spent some time in the interview exploring why the applicant was intending to stay at a specific address - was it friends, was it a hotel? The applicant did not know. A quick internet check would have shown that it's an employment agency and confirming that would have allowed a more definite Refusal Notice. A few months later, another Entry Clearance Officer in Pretoria confirmed in a Refusal Notice that the email address of a UK sponsor looked like an employment agency and it was - well spotted.

## CHECKS, COMPLAINTS and EXTERNAL SCRUTINY

### Internal review

143. In 2005 (AECIP 112/2005) UKvisas directed Posts with one or more Entry Clearance Manager to review all refusal notices prior to the notice being served and all other Posts should also aim to do so. As a minimum, all non-appealable application refusals should be reviewed within 24 hours of the decision.
144. It does look as though the quality of internal review is improving, and I was pleased to see file notes from Entry Clearance Managers on some of the sample files which showed that the review was more than a tick box exercise.

### Case Studies

I noted a good Entry Clearance Manager review in Baku making all of the points that I would; there were funds, the applicant had been open and straightforward in the information provided. The Entry Clearance Officer stuck to his view, and in a handwritten note said that short term students are easily able to get extensions from the Home Office once in the UK and inevitably end up staying. I raised concerns about this after my visit to Tashkent, where the Entry Clearance Officer used exactly the same argument. I agree with the Manager, that the application should be assessed on intentions at the time. Applying for an extension, once in the UK, is allowed by Parliament.

An Entry Clearance Manager in Lagos thought that a Refusal Notice was inadequate and arranged for a revised and reasonable Refusal Notice to be sent to the applicant. What I liked about the cover letter was that the visa section acknowledged that there had been a routine review, explaining that the new Refusal Notice gave a clearer explanation of the reasons for refusal.

145. On my visits to Posts I have seen that some Entry Clearance Managers do not have the paper file before them in order to undertake the review. I find it difficult to see how the review can be adequately thorough if the Entry Clearance Manager is unable to read the application form and look at the supporting documentary evidence.
146. I note that I am raising wider concerns about the appropriateness of a 100% Entry Clearance Manager review with UKvisas and will report on its response in my next Report.

### Complaints

147. For applicants without full rights of appeal, being able to make a complaint about inadequate service or an unreasonable decision is their main route of

- grievance. UKvisas began to pay attention to good complaint handling practice in the middle of 2006, so the effects of that are not seen in this sample.
148. In the meantime, I saw far too many files where there was a letter of complaint but no sign of any response. I am also concerned by standard letters with little or no personal information at all, including one from Abuja which addressed a women as Dear Sir. In Tbilisi, a letter from the Entry Clearance Manager with routine paragraphs completely failed to respond to a single point of complaint about the existence of a translator in the UK, which had been the sole reason for refusing a business visit visa.
149. In March 2006, UKvisas began to keep a record of complaints handled by its headquarters. From then until September, I gather that it recorded 126 complaints. There is no record kept of the type of case these complaints relate to so I am unable to tell how many relate to applications refused with limited rights of appeal. I am surprised that UKvisas does not record the source of the complaint, for example, the applicant, a sponsor, a representative, a MP or similar, and **I recommend** that it should do that. Even more surprisingly, UKvisas was unable to tell me how many complaints had been upheld, and for what reasons. There was, however, a single sign of a lesson being learnt as the result of the findings in a complaint. A passport had been sent, in error, to UKvisas and had been lost. The Visa Customer Service team set up a register of passports and other valuable documents received and they are now recorded on receipt and when they are passed on.
150. UKvisas has taken steps to gather information from Posts but when it tried to do that in mid 2006, only 76 out of 140 posts responding to the request. UKvisas sent a firmer reminder and a clear set of expectations. On my visits to Posts I examine the complaints record and can confirm that from autumn onward, there are such records, though they are very basic and I have concerns about accuracy and thoroughness. UKvisas now intends to gather these records together and analyse the information and I look forward to learning of the outcome.
151. In the meantime, I repeat my concern that UKvisas working definition of what constitutes a complaint is too narrow. It has much ground to cover before it can demonstrate that it *welcomes feedback and uses it to improve services and performance* or that *it ensures that lessons learned from complaints contribute to providing better services.*<sup>7</sup>

## Appeals

152. The revised Refusal Notice for cases within my remit, seen almost throughout in 2006, includes information that the refusal to issue a visa does

---

<sup>7</sup> Principles of Good Administration: Office of the Parliamentary and Health Service Ombudsman.

not attract a full right of appeal, and that any appeal is limited to appeal on the grounds that the decision is unlawful by virtue of the Race Relations Act 1976, or is unlawful under Section 6 of the Human Rights Act 1998. I am generally satisfied that such applicants are now being provided with correct information in the Refusal Notice. The file sample included 5 cases where an applicant had lodged an appeal, though I have no record of the outcomes.

153. In Port of Spain, one applicant, when handed the Refusal Notice, said that he was making an appeal on the grounds of racism. It would have been prudent for the Entry Clearance Officer, who recorded the applicant's comments in detail, to have recorded his or her own response - that the applicant should provide a written notice of appeal within 28 days.
154. I do note that in cases where there are full rights of appeal, the Refusal Notice includes the address of the Asylum and Immigration Tribunal and information on how to lodge an appeal. **I recommend** that applicants with limited rights of appeal should also be provided with the appropriate contact address and an explanation that an appeal should be in writing. It is up to the Tribunal to determine whether the appeal is on Race or Human Rights grounds.
155. I am concerned to see the terms of some routine cover letters sent when Refusal Notices are posted out to applicants rather than collected in person. This practice is growing with the move to commercial partnerships and letters tend to say "There is no entitlement to appeal this decision", but that is wrong. What seems to have happened is that UKvisas has corrected the Refusal Notices but not thought through the implications for related correspondence which is often delegated to support staff with little managerial oversight.
156. I also note that some follow up correspondence is not setting the correct position out adequately and often contradicts the information in the Refusal Notice. I note, for example, the standard letter used in Lagos which says "Unfortunately you have no statutory right of appeal" when replying to correspondence about a refusal. First of all there is a statutory right, though that is limited. Just as important though is the inappropriate use of the term "unfortunately" which gives the impression that the writer does not support the current legislation. It is Parliament which determines which applicants have various appeal rights and UKvisas staff should not be saying that Parliament's will is "unfortunate".
157. **I recommend** that letters in cases with limited rights of appeal should not give the impression that there are no rights of appeal, and that they should include proper information on the available appeal rights and route.

### **The Ombudsman**

158. The Parliamentary and Health Service Ombudsman investigates complaints of maladministration. The Ombudsman does receive cases from

complainants based overseas and who do not, therefore, have ready access to a MP. In practice, such complainants are normally referred to the Chair of the Public Administration Select Committee which has generally been willing to refer them on for the Ombudsman's consideration. UKvisas is not aware of any complaint about an application with limited rights of appeal being made to the Ombudsman in the first 9 months of 2006 .

## Judicial Review

159. The exercise of powers by public authorities, including Ministers and officials, is always open to challenge in the Courts by way of Judicial Review; the Courts do not assess the merits of the decision but rule upon its lawfulness. For cases within my remit, where an applicant does not have full rights of appeal, applicants can seek to challenge the Entry Clearance Officer's decision through Judicial Review. When considering whether a body such as UKvisas has been acting outwith the law, the Court will look at the relevant statutory provisions and the purpose of the statute. Public authorities must also act with reason and the Courts have defined unreasonableness as "conduct which no sensible authority acting with due appreciation of its responsibilities would have decided to adopt" so the Court would assess if a decision was "so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it." The Court would also look for consistency in the decision-making process.
160. I am pleased to report that during 2006, UKvisas began to keep information on how many Judicial Reviews have been raised by applicants with limited rights of appeal. Of the 37 Judicial Reviews received from January to September 2006, 15 (40.5%) were from applications with limited rights of right of appeal. The outcomes were:
- 6 (40%) were conceded by UKvisas
  - 2 (13.3%) were contested and won by UKvisas
  - None were contested and lost by UKvisas
  - 4 (26.6%) cases are ongoing
  - In 3 cases UKvisas were not the defendant

## Case Studies

The application was for a 6 month visit visa and the applicant intended to stay with her boyfriend in the UK. While the Entry Clearance Officer was "convinced of the genuine nature of the relationship", he was not satisfied that the applicant would leave the UK at the end of 6 months. The applicant had previously been refused a one-year student visa to learn English in the UK. UKvisas took legal advice and conceded the case. Bangkok agreed to reconsider the application.

The applicant, in Islamabad, wished to come to UK for a visit, funded by his father. He made 5 applications over a period of 4 months and each time was refused a visa because Entry Clearance Officers were not satisfied that he "had sufficient family ties to return to Pakistan at the end of his visit". He sent a Pre Action Protocol letter to Islamabad which was ignored. UKvisas received notification of Judicial Review and Islamabad agreed to issue visa on the grounds of the claimant's family's good immigration record. When I received this summary, I pointed out that the requirement under the Immigration Rules is to leave the UK at the end of the visit, and that there is no requirement to return to any specific place. UKvisas amended its record of Judicial Review cases accordingly.

## CONCLUSIONS

161. The period covered by this Report was a very busy one for UKvisas. Its attention could easily have been focused solely on big programmes of work that do not impact on current customers, for example the roll out of biometrics and global commercial partnership contracts. What matters to the visa applicant today is that they have good information about the visa process and its expectations, that they are treated courteously when they do apply, that decisions are fair and that, if refused, they know why in a Refusal Notice that is well presented and in accord with best practice. UKvisas has kept that in mind.
162. There has been a significant improvement in the quality of UKvisas work compared with 2005 and I have found that that Refusal Notices are more consistent and less idiosyncratic. Improvements to the basic training course have helped, but there is also a greater pride in visa work and being an Entry Clearance Officer and I have also sensed development in the capabilities of Entry Clearance Managers. I note that clear guidance on family visit appeal rights has markedly reduced errors, and look forward to the detailed guidance on Refusal Notices having a similar impact.
163. In my visits and in the file sample, I have identified a number of issues for UKvisas to address. I summarise them under key headings;
- paying attention to the needs of smaller Posts;
  - consistent, accurate pre-application information;
  - accurate data entry, especially business visitors;
  - proper use of the Immigration Rules that apply to child visitors
  - accurate information on appeal rights;
  - clarification of the policy on signing Refusal Notices;
  - an improved complaints and post decision correspondence process that allows lessons to be learnt to improve decision quality.
164. I confirm that I see my role as Independent Monitor as being truly independent but with a core aim of guiding UKvisas on how it can learn and develop in order to do the best possible job. I record here how constructive UKvisas has been in its responses to my recommendations and observations.

L M Costelloe Baker  
Independent Monitor  
March 2007

## **APPENDIX 1 : The relevant Immigration Rules**

### **Visitors: Requirements for leave to enter as a visitor**

40. For the purpose of paragraphs 41-46 a visitor includes a person living and working outside the United Kingdom who comes to the United Kingdom to transact business (such as attending meetings and briefings, fact finding, negotiating or making contracts with United Kingdom businesses to buy or sell goods or services)

41. The requirements to be met by a person seeking leave to enter the United Kingdom as a visitor are that he:

- (i) is genuinely seeking entry as a visitor for a limited period as stated by him, not exceeding 6 months; and
- (ii) intends to leave the United Kingdom at the end of the period of the visit as stated by him; and
- (iii) does not intend to take employment in the United Kingdom; and
- (iv) does not intend to produce goods or provide services within the United Kingdom, including the selling of goods or services direct to members of the public; and
- (v) does not intend to study at a maintained school; and
- (vi) will maintain and accommodate himself and any dependants adequately out of resources available to him without recourse to public funds or taking employment; or will, with any dependants, be maintained and accommodated adequately by relatives or friends; and
- (vii) can meet the cost of the return or onward journey.; and
- (viii) is not a child under the age of 18.

### **Requirements for leave to enter as a child visitor**

46A The requirements to be met by a person seeking leave to enter the United Kingdom as a child visitor are that he:

- (i) meets the requirements of paragraph 41 (i)-(vii); and
- (ii) is under the age of 18; and
- (iii) can demonstrate that suitable arrangements have been made for his travel to, and reception and care in the United Kingdom; and
- (iv) has a parent or guardian in his home country or country of habitual residence who is responsible for his care; and
- (v) if a visa national:
  - (a) holds a valid United Kingdom entry clearance for entry as an accompanied child visitor and is travelling in the company of the adult identified on his entry clearance, who is on the same occasion being admitted to the United Kingdom; or
  - (b) holds a valid United Kingdom entry clearance for entry as an unaccompanied child visitor.

### **Visitors in transit: Requirements for admission as a visitor in transit to another country**

47. The requirements to be met by a person (not being a member of the crew of a ship, aircraft, hovercraft, hydrofoil or train) seeking leave to enter the United Kingdom as a visitor in transit to another country are that he:

- (i) is in transit to a country outside the common travel area; and
- (ii) has both the means and the intention of proceeding at once to another country; and
- (iii) is assured of entry there; and
- (iv) intends and is able to leave the United Kingdom within 48 hours.

### **Visitors seeking to enter or remain for private medical treatment: Requirements for leave to enter as a visitor for private medical treatment**

51. The requirements to be met by a person seeking leave to enter the United Kingdom as a visitor for private medical treatment are that he:

- (i) meets the requirements set out in paragraph 41 (iii)-(vii) for entry as a visitor; and

- (ii) in the case of a person suffering from a communicable disease, has satisfied the Medical Inspector that there is no danger to public health; and
  - a) can show, if required to do so, that any proposed course of treatment is of finite duration; and
- (vi) intends to leave the United Kingdom at the end of his treatment; and
- (v) can produce satisfactory evidence, if required to do so, of:
  - a) the medical condition requiring consultation or treatment; and
  - b) satisfactory arrangements for the necessary consultation or treatment at his own expense; and
  - c) the estimated costs of such consultation or treatment; and
  - d) (d) the likely duration of his visit; and
  - e) sufficient funds available to him in the United Kingdom to meet the estimated costs and his undertaking to do so.

**Visitors seeking to enter for the purposes of marriage: Requirements for leave to enter as a visitor for marriage**

56D. The requirements to be met by a person seeking leave to enter the United Kingdom as a visitor for marriage or civil partnership are that he:

- (i) meets the requirements set out in paragraph 41 for entry as a visitor; and
- (ii) can show that he intends to give notice of marriage or civil partnership, or marry or form a civil partnership, in the United Kingdom within the period for which entry is sought; and
- (iii) can produce satisfactory evidence, if required to do so, of the arrangements for giving notice of marriage or civil partnership, or for his wedding or civil partnership ceremony to take place, in the United Kingdom during the period for which entry is sought; and
- (iv) holds a valid United Kingdom entry clearance for entry in this capacity.

**Students: Requirements for leave to enter as a student**

57. The requirements to be met by a person seeking leave to enter the United Kingdom as a student are that he:

- (i) has been accepted for a course of study which is to be provided by an organisation which is included on the Department for Education and Skills' Register of Education and Training Providers, and is at either:
  - a) a publicly funded institution of further or higher education; or
  - b) a bona fide private education institution which maintains satisfactory records of enrolment and attendance; or
  - c) an independent fee paying school outside the maintained sector; and
- (ii) is able and intends to follow either:
  - a) a weekday full time course involving attendance at a single institution for a recognised full time degree course at a publicly funded institution of further or higher education; or
  - b) minimum of 15 hours organised daytime study per week of a single subject, or directly related subjects; or
  - c) a full time course of study at an independent fee paying school; and
- (iii) if under the age of 16 years is enrolled at an independent fee paying school on a full time course of studies which meets the requirements of the Education Act 1944; and
- (iv) intends to leave the United Kingdom at the end of his studies; and
- (v) does not intend to engage in business or to take employment, except part time or vacation work undertaken with the consent of the Secretary of State for Employment; and
- (vi) is able to meet the costs of his course and accommodation and the maintenance of himself and any dependants without taking employment or engaging in business or having recourse to public funds.