

# Guiding the gatekeepers: entry clearance for settlement on the Indian sub-continent

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## At a glance

This article is the result of a ten-day visit (undertaken as part of a wider research project) in early 2006 to three entry clearance posts on the Indian sub-continent (referred to here as Post A, Post B and Post C). The author was able to observe all aspects of the decision-making process and read background material as well as interview a range of staff. The article reflects on aspects of the entry clearance process particularly as it relates to settlement.

## 1. Introduction

Admission for settlement from the sub-continent was, for many years, subject to intense criticism for a 'culture of suspicion'<sup>2</sup> and there was little dialogue between the service and applicants or their representatives. It is now nine years since the removal of the primary purpose rule, the greatest single source of discontent.<sup>3</sup> UK communities of South Asian origin are now well-established and a significant electoral constituency.<sup>4</sup> The rapid expansion of the Indian economy is changing the relationship between the UK and the sub-continent<sup>5</sup> although concern remains about aspects of family migration from the region.<sup>6</sup>

This evolution is reflected in the approach and attitudes that I observed during my visit. The very fact that my visit proceeded in such an open and flexible way suggests a willingness to engage in dialogue and submit to scrutiny. I understand that UKvisas now engages with a range of stakeholders and is open to constructive debate and my experiences at local level were consistent with this.

\* I thank all the staff at the entry clearance posts that I visited for making me welcome, taking the time to show me around, answer my questions and provide me with background material. I also thank UKvisa staff for their clarifications and comments on an earlier draft of this article.

1 During my visit, I interviewed 13 ECOs, 7 ECMs, 5 locally appointed staff and 3 senior managers. I met staff at the Forced Marriage Unit and the High Commissioner at one post. I also observed 22 settlement interviews. Interviews were semi-structured but became more wide-ranging particularly as the visit progressed. Staff were generally very willing to discuss their job and their concerns.

2 For commentary on this period, see Commission for Racial Equality, *Immigration Control Procedures: Report of a Formal Investigation* (1985) S Juss, *Discretion and Deviation in the Administration of Immigration Control* (Sweet and Maxwell, 1997) and S Sachdeva, *The Primary Purpose Rule in British Immigration Law*, (Trentham Books, 1993).

3 According to Macdonald and Blake, the rule 'generated more anger and anguish than perhaps any of the other Immigration Rules.' (I Macdonald and N Blake, *Immigration Law and Practice* (Butterworths, 1991) pp 260-261).

4 Unusually for a liberalising measure, abolition of the primary purpose rule was in Labour's 1997 manifesto

5 See, for example, 'Active diplomacy for a changing world' Jack Straw's speech to launch the Foreign and Commonwealth Office White Paper on international strategic priorities (28th March 2006).

6 For a discussion on this see H Wray 'An Ideal Husband? Marriages of convenience, moral gate-keeping and immigration to the UK', *European Journal of Migration Law* (forthcoming).

The visa system has been going through a period of rapid change. The number of applications has grown dramatically in recent years and this is expected to continue.<sup>7</sup> The significance of entry clearance in the immigration process has increased since devolution of the power to grant leave to enter in 2000.<sup>8</sup> Posts also face technological challenges such as the introduction of biometric data collection.<sup>9</sup> Dealing with these has required rapid organisational change including streamlining the application process.<sup>10</sup>

While the efficient and accurate issue of short-term and work visas is vital to the economy, settlement allows up different considerations. These encompass the maintenance of trans-global family networks, the expectation of UK-based residents that they may be joined by their families and the evolving relationship between the UK and nations who have historically been sources of primary migration, notably its former colonies.

Refusal rates on the Indian sub-continent for settlement are considerably lower than in the past. However, they are not negligible at around 20%, a figure similar to that for Africa.<sup>12</sup> This reflects a higher general refusal rate for those regions. This may be attributable to the greater poverty of these regions which means there is more incentive to migrate and more applicants fail on financial grounds. Nonetheless, the quality of decision-making has remained subject to critical scrutiny<sup>13</sup> and I observed some disparity between the good practice exercised in the majority of cases and the outcome in some applications. While these latter are a small minority, they contribute to a high success rate at appeal<sup>14</sup> and to a continuing poor public image of the entry clearance service in some quarters. Appeals also represent a considerable public expense and the National Audit Office has recommended that efforts be made to reduce their number.<sup>15</sup>

This article draws upon my visit to reflect on the entry clearance process as it relates to settlement and, in particular, marriage applications. While an article of this type is, of necessity, impressionistic, many of my observations have been made elsewhere as I note during the article. A critique of this nature inevitably focuses on the small number of defective decisions rather than the majority of well-made ones. It is therefore worth emphasising from the outset that I observed many examples of good decision-making, of careful consideration given to the cultural context as well as individual circumstances and of discretion exercised, humanely and pragmatically, in applicants' favour.

7 UKvisas Annual Report 2005 p. 14

8 National Audit Office ('NAO'), *Visa Entry to the United Kingdom: The Entry Clearance Operation*, HC 367 (2004), p.2

9 F Lindsley, *Report by the Independent Monitor (Immigration and Asylum Act 1999)* (2005)

10 NAO supra n 8 pp 13-19

11 See NAO supra n 8, p 31

12 See H Wray 'Hidden Purpose: UK Ethnic Minority International Marriages and the Immigration Rules' in P Shah ed. *Migration, Diasporas And Legal Systems In Europe* (Cavendish Publishing 2006) p 166.

13 See, for example, I Macdonald and F Webber *Macdonald's Immigration Law and Practice* (London: Butterworths, 2001) pp. 430-431; R McKee 'Primary Purpose by the Back Door? A Critical Look at Intention to Live Together' *Immigration and Nationality Law and Practice* 13/1 (1999) pp 3-5; letter dated 7th July 2005 from Dexter, Montague and Partners, ILPA members' mailing July 2005. In general terms, the NAO has expressed concern at the degree of variation between posts and has suggested that this should be analysed further (NAO n 8 supra, p 10). It also recommended a more explicit consideration of quality issues (p 22) while recognising that this is a complex and imprecise art (p 26).

14 For example, at Post A in 2005, almost 61% of appeals (1516 out of 2491) were allowed although these figures do not differentiate between settlement and non-settlement applications. Globally, 46.9% (20,825 out of 44,375) of appeals were allowed in 2004 (Home Office, *Control of Statistics United Kingdom 2004* Cm 6690 p 83). In a significant proportion of allowed appeals, new evidence is submitted (around 34% according to NAO n. 8 supra p 27) or the sponsor's support lends credibility (around 23%). However, while ECOs are not directly responsible for these, they do raise questions, considered in this article, about aspects of the process.

15 The total cost of hearing an appeal is estimated to be £2500 per case (NAO n 8 supra p 28). It is not clear precisely whose costs are included in this estimate.

## 2. The entry clearance officer as legal decision-maker

The role of the entry clearance officer ('ECO') is pivotal. Only the ECO can decide to issue or refuse a visa and, given the number of decisions made each year, no amount of supervision or quality control can substitute for good quality decision-making at this level.

While some ECOs that I met had graduate or even post-graduate qualifications, others did not. ECOs may be appointed from the Home Office or the Foreign and Commonwealth

FCO staff and 1 week for Home Office staff, although it is found to be of value.<sup>16</sup> There is a programme of additional training upon arrival and ongoing training once the ECO is in post. Following concern expressed by the National Audit Office, there has been a renewed emphasis on training.<sup>17</sup> When asked how they learnt their skills, some ECOs commented that they learnt, at least in part, by observing more experienced peers. It is natural and even inevitable that some learning will take place in this way but it helps explain how, as discussed later, a few ECOs have adopted practices that are more often associated with an earlier era in entry clearance.

An ECO's job is complex and demanding given the grade to which they are appointed.<sup>18</sup> Sitting alongside the ECO, I appreciated the difficulties of assessing from papers or from translated answers in interview, a person's intentions or ability to make a living. ECOs have to evaluate documentation knowing that forgeries may be put forward. Pressure comes not only from applicants and their representatives but, in the other direction, from those concerned with the integrity of control.<sup>19</sup>

That is not the only conflict. Placed at the interface of an administrative and a legal system, the ECO must comply with the requirements of both. The necessity for speedy and efficient decision-making is not easily reconciled with the individualised scrutiny required by law. ECOs are recruited as administrators and it is unsurprising that some have difficulty in understanding and applying legal rules appropriately. Yet, the decisions they make must be defensible in terms of legal principle.

The ECOs I met displayed varying attitudes towards the legal framework. Some were largely negative saying that immigration judges do not understand the problems with which ECOs contend and that their decisions are too inconsistent to provide useful guidance. Most however appreciated that their work has to be informed by the demands of the legal system and wanted to engage constructively with it. They were very conscious of the possibility of their decisions being overturned on appeal and frequently referred to this when deciding to issue a visa. The problem lay more in synthesising and understanding legal principles. In some instances, they took rather a mechanistic approach, saying, for example, that they avoided particular phrases disliked by immigration judges. This may be because they have not considered how these suggest a substantively incorrect approach or because they have difficulty expressing themselves effectively in legal terms.

16 NAO n 8 supra p 23

17 UKvisas Annual Report 2005 p 10. The lack of this was noted by the NAO (n 8 supra p 23).

18 ECOs are appointed at executive officer grade, the third most junior rung in the civil service. NAO recognises entry clearance work as 'demanding' (NAO n 8 supra, p 21).

19 The extent to which visas may be wrongly issued is however difficult to measure. The previous PSA target was for fewer than 0.04% of grants of leave to enter to be cancelled upon entry, a target that UKvisas reached in 2005 (Annual Report 2005 p 2). However, following the delegation of leave to enter to entry clearance posts, it has become a less reliable measure and is not present in the 2005-8 PSA targets. NAO believes there is scope to improve the coverage and extent of performance information (NAO n 8 supra p 26).

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In a very few cases, I observed ECOs demonstrating basic misconceptions even as to the requirements of the rules.<sup>20</sup> ECOs told me that they were not really aware of case law developments. Some commented that they did not have the expertise to absorb legal arguments directly from determinations. There does not seem to be a systematic way of ensuring that new case law is drawn to ECO's attention in an appropriate way. The Diplomatic Service Procedures ('DSPs') are available online and these provide some guidance although they have been criticised for being incomplete or out-of-date.<sup>21</sup>

The Independent Monitor has suggested that ECOs should have copies of the ICWI handbook and that other more detailed texts such as *Macdonalds* should also be available at posts.<sup>22</sup> There is also scope for more comprehensive and accurate on-line guidance given the ease with which on-line materials may now be disseminated and updated. However, making materials available does not ensure their use. ECOs are unlikely to make effective use of these resources if they do not view themselves as legal decision-makers or feel too pressurised to reflect upon their decision-making.<sup>23</sup> The issue is one of culture, training and self-perception. ECOs are both physically and psychologically distant from those who scrutinise their decisions. I had some informal discussions with ECOs in which I explained how an immigration lawyer or judge might view a particular decision. Several commented that they found this enlightening; they had not been previously exposed to this type of reasoning. ECMs have started to receive some training directly from judges and this could possibly be extended to ECOs.<sup>24</sup>

### 3. The entry clearance process

For those engaged in a primarily legal critique, it is easy to overlook the scale of the administrative task involved in considering thousands of visa applications.<sup>25</sup> There have been considerable efforts in recent years to improve the administration of entry clearance and all three posts that I visited provided a speedy and efficient service.<sup>26</sup>

Applications on the sub-continent are now made through private agencies and I had an opportunity to observe the work of one such company, VFS who, I was advised, were appointed after a tendering process compliant with Civil Service procurement procedures. Their appointment has resulted in the elimination of queues to make an application and much reduced travelling time for many applicants who may come to a VFS office, complete and submit their application in little more than an hour.

20 For example, one ECO did not appreciate that children are not usually admitted to the UK if there is a parent able and willing to care for them abroad (see para 297 HC 395).

21 Lindsley n 9 supra, p 60. A recent examination for the purposes of this article revealed examples of out-of-date or incomplete analysis.

22 Lindsley n 9 supra, p 60. At Post A, a senior member of staff had purchased *Macdonalds* out of her own resources and had funding to acquire copies of the ICWI handbook. Post C did not have *Macdonalds* or any other type of legal textbook.

23 There is a wide academic literature arguing that legal rules are often subordinated to other norms so it is unlikely that entry clearance is alone in facing these difficulties; see, for example, D Galligan *Authoritarianism in Government and Administration: The Promise of Administrative Justice* Current Legal Problems (Vol 54) 2001 79.

24 It might also be of value if immigration judges (and even practitioners) were to visit entry clearance posts. I understand that some such visits have taken place elsewhere. I am also advised that a Home Office Senior Presenting Officer is spending a period at, among others, Post C in an advisory capacity.

25 For example, at Post A, in 2005, over 150 000 applications were made. At the time that I visited there were 3 Entry Clearance Managers (due to be increased to 4), 13 ECOs, due to be 14 and 50 local staff. Temporary staff are recruited to deal with seasonal increases.

26 The queue for working holiday maker interviews however is unacceptably long at the posts I visited and was more than a year at one of them.

Applications are processed the next working day. Where a decision can be made on the papers, this will be given to the applicant via VFS on the same day where applications are made locally or the following day if it has to be sent to more remote offices.

Waiting times for settlement interviews vary between posts but are now vastly shorter than in the past. For example, the wait for settlement interviews is about 1 month at Post A, 7 weeks at Post B and 6 weeks at Post C, well within the objectives set in UKvisas' public service agreement.<sup>27</sup>

Given previous delays, the success in providing a faster service is commendable. Nonetheless, speed is not the only consideration and the National Audit Office Report has recommended a more explicit consideration of quality issues in measuring performance.<sup>28</sup>

### 3.1 Right from the start: advising the applicant

Well-informed applicants with good-quality applications are an obvious benefit to the entry clearance service while the high cost in local terms of a visa application means that applicants should be encouraged to apply only if they have a reasonable chance of success.<sup>29</sup> The National Audit Office found a significant gap between applicants' understanding of what is required and the actual position.<sup>30</sup>

Pre-application advice is therefore critical particularly now that pre-sifting does not take place. Many applicants take advice from agents or from those in authority within their local society. This may not always be accurate and sometimes results in poor quality applications or forgeries. UKvisas and the posts I visited are aware of these problems and undertake public information campaigns to disrupt this. They also provide general information on web-sites and information leaflets but they are not able to give individualised or independent advice.

UKvisas Annual Report for 2004 says that staff at agencies such as VFS 'offer advice where necessary'<sup>31</sup> However, this observation does not appear in the 2005 report perhaps reflecting concern at the implications of an advice-giving role.<sup>32</sup> I am advised that VFS provide the same level of information as the posts themselves. They do enquire whether the applicant wishes to supply additional documents indicated on the checklists and, at one post, I was told informally that applicants are discouraged by VFS from applying without these. While it is right that applicants should not be encouraged to make applications that are likely to fail, this is problematic if the checklist goes beyond legal requirements.<sup>33</sup>

The ideal solution would be a sufficient supply of good quality, independent and affordable advice. Some UK solicitors have local offices and the Immigration Advisory Service has some presence that could be expanded. However, the major source of accurate information remains, by default, the visa service itself. As well as the information referred to earlier, posts also provide guidance on the type of documentary evidence that they expect. At Posts A and

27 See NAO n 8 supra p 12. Queues are longer for a few categories. For example, those previously refused wait up to 4 months at Post B.

28 NAO n 8 supra p 22. Measuring this is not straightforward however. NAO (pp 8-9) commented on the benefits that would accrue from increased information as to compliance although it recognised the difficulties of obtaining this. See also Committee of Public Accounts: *Seventh Report: Foreign and Commonwealth Office: Visa Entry to the United Kingdom: The Entry Clearance Operation*, HC 312 (Session 2004-5), Conclusions and recommendations.

29 A point supported by NAO n 8 supra p 31

30 NAO n 8 supra pp 32-33

31 p 4

32 Lindsley n 9 supra p 10

33 Management staff are aware of the potential difficulties and visit VFS offices, particularly more remote ones, for training and monitoring purposes. UKvisas also provides material to be displayed at VFS offices.

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B, applicants are given a list of 'suggested documents'. It is right that these are described as suggestions given the absence of prescription in the immigration rules while the relative brevity of the list shows a desire not to overburden applicants. However, while the usual types of evidence are suggested, it is not explained that other documents may suffice and the list also includes items that are not always needed and which cost money to obtain such as a property inspection report; brief clarification of this might be helpful. It might also assist, in marriage-applications, to ask for wedding photos and/or evidence of contact as the ECOs I observed expected this type of evidence.

At Post C, the list that I was shown during my visit was much longer and arguably went beyond asking for evidence on the balance of probabilities. Applicants were also told that failure to provide all the documents requested would lead to the return of the application even though ECOs were aware that not all these documents are required and issued visas when some of them were absent. I am advised that this particular notice is no longer in use. It had been devised to encourage applicants who might not be interviewed to submit full documentation with their application. However, it placed additional potentially unlawful hurdles in applicants' path and may have encouraged the submission of forged documentation. While I have not seen the new notice, the willingness to revise defective advice suggests a reflective approach.<sup>34</sup> It is certainly difficult to get the balance right between being too prescriptive and too imprecise. A possible way forward would be to explain that there is no prescribed form of evidence and no particular document is essential but that certain documents are commonly put forward to meet particular requirements (with a warning as to the consequences of forgery).

These suggestions should not be more demanding than is required by the legal standard of proof. Consistency across posts is also desirable with variations only where these are objectively justified by local conditions and within the framework of race discrimination legislation.<sup>35</sup> The Independent Monitor has made a similar point in relation to non-settlement visas and UKvisas responded saying that ECOs should be able to 'ask for any supporting documentation they consider to be relevant'.<sup>36</sup> This may be true on an individual basis and local leaflets may make this clear but to have wide variations in standard practice between countries gives support to those who believe that stereotyped decision-making still exists.

### 3.2 Deciding to interview

A rapid service places considerable pressure on ECOs who have to make literally hundreds of decisions in a week. At Posts A and B, ECOs may make up to 100 decisions in a working day (although the majority of these will be non-settlement applications that are usually less time-consuming).<sup>37</sup> Locally appointed staff now do much ancillary and support work enabling ECOs to focus on their essential function of deciding visa applications. Nonetheless, some ECOs said they found the job stressful.

Many more decisions are now taken on papers alone with only a minority of applicants called for interview.<sup>38</sup> UKvisas believe that paper-based decision-making is often more objective than interviews but it is likely also to represent a practical response to ever increasing

<sup>34</sup> I am also advised that the post is carrying out road shows and other activities to ensure applicants are better informed.

<sup>35</sup> See n 66 below on race discrimination. It is arguable that, in the absence of a S19D authorisation, a demand for documentary proof that is higher in some countries than in others is unlawful despite the absence of a discriminatory motive. See also NAO n 8 supra p 32 on the need for consistency.

<sup>36</sup> Lindsley n 8 supra p 51

<sup>37</sup> This is well in excess of the expectation of UKvisas that ECOs should process up to 40 routine applications per day (NAO n 8 supra p 7).

<sup>38</sup> At Post B, for example, only around 25% of applicants are interviewed.

numbers. As interviews are no longer a routine procedure, deciding whether to interview becomes part of the decision-making process and a quality issue. At Post C, interviews are only booked with the approval of an ECM but my understanding is that, at the other posts, the decision is for the ECO's individual discretion.

At Posts A and B, applicants are advised that the decision may be made without interview. Such a warning did not appear in the now withdrawn leaflet at Post C. The Independent Monitor has drawn attention to the necessity for care in ensuring that applicants are aware of the criteria for decision-making if they are to be refused without interview.<sup>39</sup>

ECOs with whom I discussed this spoke of 'easy refusals', 'easy issues' and 'easy interviews' requiring interview. 'Easy refusals' are those where, on the face of the documents, the applicant has not met the requirements of the rules. This happens relatively rarely in settlement cases but if there is a fundamental flaw in the application, it may be inappropriate to invite the applicant to an interview that cannot result in an issue.

ECOs explained other refusals without interview by saying that where an applicant goes on to submit further evidence to demonstrate compliance with the rules, the visa may be issued or the applicant called for interview.<sup>40</sup> All appeals are also reviewed. ECOs therefore do not regard an outright refusal as excessively harsh. I was advised at Post C that ECOs formerly corresponded with applicants advising them how to improve their applications but this was abandoned as the process became protracted and time-consuming. It is understandable that ECOs are wary of creating another administrative burden and view this 'second chance' as a reasonable compromise. However, its unofficial nature at least in non-appealable cases means that applicants may not always be aware of the opportunity. Consideration could be given to putting an appropriate wording in refusal notices so that less knowledgeable applicants are not disadvantaged.

An 'easy issue' is where the applicant provides documentary evidence to show compliance with the rules and his or her profile makes him a likely candidate for that type of visa. ECOs described as a typical 'easy issue' a wife in her early twenties in an arranged marriage with a slightly older UK-based man. Maintenance and accommodation are evidenced in ways that the ECO considers to be sufficient and reliable and a photo album showing a traditional wedding with many guests would be provided.

Two factors therefore largely determine whether to call for interview. If some aspect of the evidence is considered to be incomplete or ambiguous, then the ECO will use the interview to clarify this. However, if the applicant is not aware of the issues that are in question, they may not prepare adequately for the interview. ECOs expressed reluctance to commit themselves in advance to areas of inquiry. However, I observed interviews where the parties had not brought additional evidence with them as they did not appreciate it would be required. Provided it is suitably qualified, an indication to applicants of the likely areas to be covered in the interview might render these more effective. This would not be a prejudging of the issue<sup>41</sup> but an indication of areas of doubt and might result in shorter and fewer inconclusive interviews.

In addition, it seems that applicants with an atypical profile are more likely to be called for interview particularly in marriage applications. Some posts are creating profiles of those applicants who are more likely to be non-compliant but, in marriage cases, ECOs seemed to

39 Lindsley n 9 supra p 27

40 Although this is not provided for in the DSPs outside the context of an appeal; see paras 26.8 and 27.10.

41 UKvisas expressed concern about this in response to similar proposals by the Independent Monitor (Lindsley n 9 supra p 49).

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rely principally on anecdotal evidence and on their beliefs about what is normal for the region than on objective data about non-compliance. For example, staff commented that they tend to scrutinise more closely applications from male spouses and fiancés particularly when the UK-based wife is older and/or divorced. However, they did not seem to have any firm evidence that these types of marriage were more likely to be sham and such beliefs may be incorrect<sup>42</sup> or an unintended resurrection of primary purpose.<sup>43</sup> Not all the ECOs with whom I discussed the question understood the importance of distinguishing between motive and intention in applying 'intention to live together'.

Applicants should not face the additional burden of an interview simply because their case is not conventional in the absence of evidence that the profile makes a bogus marriage or other non-compliance more probable.<sup>44</sup> Mostly, however, it is not a clear-cut issue. An application is rarely satisfactory in all respects and the decision as to interview is likely to be based on the ECO's overall assessment of the 'credibility' of the application in which the particular characteristics of the applicants may play too great a role.

At Post B, I became aware of a number of cases involving failed asylum seekers and overstayers who had married in the UK. I was advised that these applicants 'rile' ECOs. While additional scrutiny of the application of someone who has previously breached the rules may be justified, it seems that, on occasion at least, selection for interview was for the purpose not of testing future compliance but in order to make the application process more difficult and time-consuming. I observed one such interview in which the applicant had developed a business, bought a house, married and had children. The application was an 'easy issue' as the ECO acknowledged and little was asked during interview about the applicant's present circumstances. However, the ECO put a series of hostile questions about his previous entry to the UK, his failed asylum claim and his absconding.

### 3.3 The interview

Interviewing is resource intensive and difficult. ECOs receive training but the quality of the interviews that I observed varied. While the ECO who assessed the application on papers notes the reasons for interview on the file, interviews often go beyond these. ECOs are given a template for interview but find this of limited assistance and usually decide themselves which questions to ask.

ECO's type their questions and answers as they go along and this is undoubtedly a burden.<sup>45</sup> The physical environment at some posts, where interviews are conducted in small cubicles through glass screens<sup>46</sup>, creates a further barrier. Interviewing is tiring and stressful and

42 See R. Ballard, 'Riste' and 'Ristedari': the significance of marriage in the dynamics of transnational kinship networks ([www.art.man.ac.uk/CASA](http://www.art.man.ac.uk/CASA))

43 Very few ECOs operating now would have been present during the era of primary purpose. However, the belief that an applicant should have the 'right' motive for entering a marriage does seem to have survived the rule's abolition in a few cases. This may be because it is an understandable if legally irrelevant background belief or because the type of questioning and reasoning associated with primary purpose form part of the inherited practice that have been passed down generations of ECOs.

44 This does occur at least occasionally. I observed one instance where the interviewing ECO did not understand why a husband had been called for interview as the application was complete in all respects. In the end, he decided to ask a few questions to avoid the applicant believing his time had been wasted.

45 However, the practice of transcribing questions and answers rather than making notes is an obvious benefit and is in accordance with UKvisas' Best Practice Guide (Lindsay n 9 supra p 19). The Independent Monitor has recommended that ECOs should receive training in touch-typing (p 59).

46 Screens are for security. However, at post B, settlement interviews are carried out in small interview rooms, security checks having been carried out beforehand. Obviously, this requires suitable rooms to be available but it did perhaps promote a less adversarial style of interview.



ECOs may have to conduct up to 8 settlement interviews per day (although some of these may be quite short). Nonetheless, in the interviews I observed, some ECOs made insufficient efforts to be courteous. There was sometimes no greeting or introduction, eye contact was not made and the tone was brusque. As questions were put through the interpreter, there was, in some cases, no direct interaction at all between the applicant and the decision-maker.

While these failings may not have a direct impact on the quality of decision-making (some of these ECOs appeared to be good decision-makers), they will have a more general adverse effect. An applicant who is justifiably refused after such an interview is less likely to accept that he had a fair hearing and it gives an unfortunate impression of the UK's attitude towards applicants.

Interviews I observed in which the purpose was principally to elicit factual information such as the extent of income or the nature of accommodation were usually effective in that respect although some applicants were poorly prepared. As indicated earlier, this might be improved by more guidance before interview.

Less successful were interviews in which the ECO has to determine more intangible matters such as credibility or the existence of a relationship. The subjectivity of such a judgement means that it can be affected by beliefs and preconceptions about the applicant. In one interview I observed, the ECO believed at the outset that bank statements were suspicious. The whole interview was coloured by this first impression and we both perceived the applicant as shifty and evasive. The ECO was about to refuse the applicant on a number of grounds including intention to live together when a final examination of the bank statements revealed that he had misunderstood them and the statements were genuine. The applicant's other answers then appeared in a very different light and the visa was issued. While the outcome here was eventually in the applicant's favour, it shows how prior beliefs about the applicant may be more important than their actual answers.

The problem of subjectivity was most apparent in interviews aimed at establishing the existence of a relationship, particularly 'intention to live together' in spouse/fiancé applications. The ECOs that I observed were not looking for reasons to refuse on intention; quite the reverse, they often seemed relieved when the applicant provided answers which justified an issue. Nonetheless, despite conscientious efforts to be fair, the outcome was, in my estimation, sometimes arbitrary.

In part, this is because ECOs may hold background beliefs that are not necessarily supported by evidence. I have already referred to the belief that atypical marriages merit the additional scrutiny of an interview. Another ECO commented to me that, although he was aware it should not be 'relevant',<sup>47</sup> he thought that parties to a loving relationship would be willing to live anywhere. It is possible that ECOs hold other views about how genuinely married couples behave which may unconsciously affect their approach.<sup>48</sup>

However, the largest problem arises from the difficulty of ascertaining a person's future intentions in any reliable or objective way. This is particularly so given the difficulties of communicating on such personal matters across barriers of language, culture and class. However, as the rule exists and the burden of proof is on the applicant, ECOs have no option but to assess intention as best they can.

I observed three interviews that are representative of the difficulty. The first involved a fiancée. She knew little about the sponsor and there were no firm plans for the marriage. Her siblings were in the UK. Her answers were sometimes confused and inconsistent. The ECO

47 Presumably referring to *Olufinusi* [2002] EWHC 2106

48 See the section on refusal notices for some examples. See also H Wray n 12 supra pp 176-184.

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considered a refusal on intention but decided to issue because he found the applicant's demeanour straightforward and because 'anti-factors' were mostly explicable in other ways. He commented that, had the applicant been male, he would have refused given the history of economic immigration by young single men from the region.

In another instance, a male applicant had married a divorcee with an eight-year-old daughter. The interview was arranged because of this apparently unusual arrangement but was unenlightening. The applicant knew something about the sponsor but this shed little meaningful light on his intentions. The ECO told me that he had 'strong doubts' about the applicant's intentions but, on balance, decided to issue.

I also observed one refusal on intention. Suspicion was aroused because the sponsor husband was 27 years older than his wife and divorced. The applicant had been previously refused on intention. Prior to the interview, the ECO correctly commented that refusals in this type of case could easily lapse into primary purpose. He was predisposed to issue if he felt able to. However, things went wrong during the interview. The explanation for the divorce was inconsistent with the previous account and the applicant also contradicted herself over the sponsor's work history.

The successful applications were not substantially different to many typical refusals while there were grounds for believing the refused applicant. Whether ECOs correctly identified which, if any, of the applications involved parties who did not intend to cohabit permanently is uncertain. Faced with the necessity of applying intention, ECOs strive to find markers to justify a decision one way or the other. Hence, the well-known and controversial practice of asking about each other's hobbies, family or history and alighting on gaps and discrepancies. These do not reliably prove or disprove intention particularly within an arranged marriage system but they do provide a point of reference. They also represent a style of decision-making that is associated with previous attitudes on the Indian sub-continent and seems to have been inherited through generations of ECOs.

Not all ECOs appreciated that this type of questioning is not obligatory. I observed one interview where the ECO told me he was sympathetic to the application. However, he was concerned to establish that intention was present and that the marriage was subsisting<sup>49</sup> even though the applicant wife was an illiterate village woman with two small children who was unlikely to have another motive for going to the UK. He pursued the issue at some length, interviewing the sponsor and the applicant separately. As well as questions about communication and money transfers, the ECO asked repeatedly about the other's hobbies and interests. These questions were met with bafflement given the parties' lifestyles. However, after some persistence, he managed to elicit mutual agreement on a few elementary matters and felt able to issue a visa.

Refusals on 'intention to live together' have been controversial since the abolition of primary purpose.<sup>50</sup> While the immigration statistics do not permit direct comparison, it is likely that such refusals are relatively uncommon outside the sub-continent and very rare in developed countries<sup>51</sup> and there is an argument for a wider review of the rule, its purpose and application. ECOs were sceptical about the effectiveness of the checks carried out when an applicant applies for indefinite leave to remain and they thus felt obliged, despite the difficulties, to assess intention with some rigour. However, it is questionable whether, in the absence of

49 In fact, 'subsisting' has recently been found by the Tribunal to add nothing to 'intention' beyond ensuring the marriage continues to exist in law (*BK and others (Turkey)* 2005 UKAIT 00174).

50 See also n 13 supra.

51 See *H Wray* n 12 supra pp 166-167 for a discussion of this.

positive evidence that intention is absent, it is possible to assess this question with any accuracy before cohabitation has begun.

### 3.4 Refusal notices

The refusal notice is critical as it will form the basis of an appeal. Given the large number of applications and thus refusals, it only requires a small proportion of these to be faulty to generate a significant number of appeals. I had the opportunity at all the posts I visited, to look at appealed decisions and my impression was that a significant proportion of the refusals were poorly argued. That does not mean that all refusals suffer from the same defect.

The Independent Monitor has criticised the use of tick-box and 'drop-down menu' refusals and these are no longer in use.<sup>52</sup> Posts do use standardised wording which are then adapted to individual cases. While time may be usefully saved through standard paragraphs setting out the grounds for refusal, reasons need to be carefully formulated. Posts use standardised reasons that are then customised to the case. The quality of the refusal is thus related to the quality of the standardised reasons. Some of these were of poor quality although I was advised that the worst examples that I saw are no longer used. Even so, appeals sometimes appeared formulaic.

Defects reflect the concerns that are discussed elsewhere in this article. Most commonly, there was an excessive focus on the quality of particular pieces of evidence rather than on the application as a whole, a doubtful application of the standard of proof, reliance upon discrepancies or a subjective judgement as to the probability of a claimed relationship. Examples of poor reasons for refusal include wage slips that 'look new', failure to provide business accounts of an employer and wage slips from a temp agency that showed a different amount each week.<sup>53</sup> One reason given for refusal was that the applicant (from a small rural village) had said the UK house was rented when the sponsor said that he owned it. In the context of a marriage application, one applicant was told that she had not shown a 'realistic commitment' to the relationship and another that the absence of intervening devotion 'does not demonstrate a strong bond of affection between you.' Several were told that the ECO was aware that the marriage 'would not be regarded as a suitable match' on the sub-continent. Some of these defects are alluded to in the DSPs suggesting that these may not have been fully integrated into all ECOs' practice.<sup>54</sup>

While the continuing move towards more objective grounds for issue or refusal should contribute to better quality refusal notices, additional training may be needed in the skills needed for writing these.<sup>55</sup> Problems may also be partly due to pressure of work. The National Audit Office found that staff did not always have sufficient time to assemble a robust written case.<sup>56</sup>

## 4. Supporting evidence: standard of proof, fraud and 'local knowledge'

Consistent with the burden of proof, the applicant is required to submit evidence to support the application. ECOs have to evaluate this to determine whether the applicant has discharged

52 Lindsley n 9 supra p 28

53 This is a particularly weak reason for refusal given that ECOs also view as suspicious wage slips which show precisely the same amount on each occasion.

54 Para 26.4.1

55 Acknowledged in UKvisas' Annual Report 2005 p 4

56 NAO n 8 supra p 7

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the burden upon him or her. The task is complicated. ECOs have to apply a standard of proof, the balance of probabilities, that admits of considerable ambivalence, they are aware that forged documents may be submitted and they have to evaluate the evidence before them in the context of a culture of which they are not usually a participating member.<sup>57</sup>

#### 4.1 Standard of proof

Some ECOs did not appear to understand the implications for decision-making of the standard being on the balance of probabilities. One ECO whom I asked could not explain the meaning of the phrase. One ECO told me that she needed to see 'real hard evidence' before issuing. While ECOs are undoubtedly taught about the standard of proof during initial training, it may be an area in which subsequent reinforcement in a practical context is needed.

As administrators working under pressure, ECOs are understandably happier if supporting evidence comes in a form that is unambiguous and easily understood. The Immigration Rules do not specify a particular type of evidence and any evidence put forward by the applicant should be considered on its own merits. Some ECOs expressed a strong preference for certain types of evidence that they regarded as more reliable although others recognised that almost any type of document may be falsified and that creating a higher bar may only encourage forgery.

I saw many examples of good practice where ECOs considered the application as a whole and based their decision on whether there was, on balance, compliance with the requirements of the rules, interpreted purposively, rather than with more specific unofficial requirements. For example, on maintenance and accommodation, some ECOs commented that, given the strong Asian family network, it was unlikely that family members would be left without support so that they accepted evidence that others might regard as incomplete.<sup>58</sup>

On the other hand, some ECOs failed, in my view, to take a proper approach to the evidence, being either excessively sceptical or focusing upon the failure to provide evidence in a particular form rather than on the strength or weakness of the application as a whole. In some cases, this was due to lack of experience or understanding. In others, it was connected to concerns about forged documentation.

#### 4.2 Forgeries

Forged documents and other forms of fraud are a source of widespread concern.<sup>59</sup> It is right to make their detection a priority not only to prevent unmerited issues but to discourage the criminal exploitation of applicants. There is however a need to debate the role that the detection of fraud should play in the overall decision-making process.<sup>60</sup>

57 A significant proportion of ECOs (around 30 to 40% at Posts A and B) are of South Asian heritage, usually from the country in which the post was located. While this may contribute to understanding local culture, differences of region, class, religion, caste or gender should not be overlooked. Those who are second or third generation UK residents may not necessarily have a deep familiarity with the local society.

58 The question of third party support was the subject of confusion. ECOs uniformly understood that third party support was acceptable only as a temporary measure. This reflects the IDIs but is of doubtful legal validity (see I Macdonald and F. Webber Macdonald's *Immigration Law and Practice* (Butterworths 2005) pp 611-612). Ironically, some ECOs expressed dissatisfaction with the 'rule', believing that it failed to take account of the nature of Asian family ties.

59 Lindsley n 9 supra pp 43-45

60 The Independent Monitor states, in relation to non-settlement visas, that other countries do not always enquire into the genuineness of documents and suggests comparing practices in other countries (Lindsley n 9 supra pp 46-47).

A preliminary point is to understand why applicants submit forgeries. In some cases, the aim is to deceive but in others, as ECOs acknowledged to me, the applicant is trying to meet expectations. Thus, if applicants are advised to submit payslips but are paid in cash, it is predictable that some will try to provide what has been demanded. The issue is one I discussed earlier how expectations are communicated to applicants. In relation to this, the Independent Monitor has recommended research into the causes of the use of forgeries.<sup>61</sup>

When an ECO suspects fraud, he or she may try to establish whether or not the document is forged through further investigation, may accept it at face value or may reject it as evidence on the basis of uncorroborated suspicion. My view is that while the first two courses are reasonable, the last is not.

In these cases, ECOs rely on the type of speculative argument that has become notorious among immigration lawyers: that payslips appear new and are of a commonly available type, that a job offer or tenancy agreement could have been produced on any word processor or that phone cards do not show actual contact. These refusals may be accompanied by details of the type of evidence that the ECO would like to see; business accounts, a P60, evidence of payment of rent or a property inspection report. Discussions with ECOs revealed that the motive is to give applicants a hint as to how they might improve the application. If these documents are submitted with an appeal or representations, the refusal can be overturned.

However, this approach is of doubtful legal validity and contributes to the perception that a culture of suspicion persists. While the burden of proof is on the applicant, once evidence is put forward that, on the face of it, discharges that burden, it is for the ECO to rebut it if he does not accept it.<sup>62</sup> A simple assertion that a document may be forged does not do that, in my view, unless there is evidence beyond speculation that this is a more likely explanation in the particular case. To take the common example of wage slips, these may be in a standard form and appear new and uncreased for any number of reasons.<sup>63</sup> To base a refusal purely upon their appearance is speculation. Actual evidence of forgery could be obtained by a phone call to the claimed employer.<sup>64</sup> Sometimes evidence of forgery may be adduced from the document itself if, for example, there are unlikely spelling errors in an official document but the best form of verification would still be comparison with a known genuine example.

This type of investigation is time-consuming and some ECOs took the view that it is better if applicants provide evidence that they regard as more persuasive. That is understandable but ECOs should deal with the evidence offered on its own merits. The appeals I have seen suggest that ECOs may not always do that, in effect requiring the applicant to produce evidence in the preferred form. This arguably raises the standard of proof. There are practical difficulties also. An employer may not be willing to provide accounts. Property inspection reports cost money. Phone cards are often the cheapest way to maintain contact.<sup>65</sup>

61 Lindsley n 9 supra, p 44

62 See paragraph 8.16 DSPs. The Independent Monitor argues that, consistent with *Khawaja v SSHD* [1984] AC 74 and *Ullah v SSHD* [2003] EWCA Civ 1366, the burden of proof on the ECO is at the high end of the balance of probabilities (Lindsley n 9 supra, p 43).

63 They may be filed immediately upon receipt. A small employer may not have access to a personalised programme for generating wage slips. The slips may even have been created specifically for the application but that does not mean that they do not represent genuine employment.

64 Posts suspect that some employers are complicit in providing bogus job offers and that bank staff also, in some cases, wrongly verify documents. How to deal with the limitations of forgery investigations is discussed below.

65 On a related point, I observed ECOs ask applicants who claimed to keep in touch by mobile phone for the sponsor's phone number. Where a number is programmed into a phone, it is unlikely that it will also be committed to memory.

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On this analysis, ECOs should either provide evidence of forgery or accept the document. With regard to providing evidence of forgery, all the posts I visited have 'Risk Assessment Units' ('RAU') that undertake investigations and report back to the ECO. They also draw up risk profiles that can assist in targeting particular types of applicant for additional scrutiny, a necessity given the vast increase in numbers of applications.<sup>66</sup> The work of the RAUs is set to expand. The intention is that by 2007/8, 75% of visa applications will be processed by posts with RAUs or visa assessment teams.<sup>67</sup>

Where documents are found to be forged, the RAU prepares a Document Verification Report explaining what checks were done and the outcome. If the evidence of forgery is believed to be 'beyond reasonable doubt', this will result in refusal under para 320 (21) of the immigration rules. Where it is considered that the evidence of fraud is on the balance of probabilities, it will be weighed in the balance with the other evidence and may contribute towards a refusal. This is reasonable provided the refusal is based on objective factors specific to the application and is not an accumulation of speculative observations.

There is scope to expand the work of the RAUs. Where job offers or payslips are considered unconvincing, for example, a phone call to the employer is relatively easy to make. One reason I was given for restaurant job offers being infrequently checked is that the time difference combined with restaurant opening hours means that calls would have to be made in the middle of the night. It is reasonable however to ask staff to work occasional unsociable hours so that these checks can be made. Other types of document, such as bank statements, involve more complex investigations but RAUs are building up expertise and a body of knowledge that will make future detection easier.

Immigration judges have commented to me that they find specific evidence of forgery valuable while an applicant who sees a clear and objective basis for refusal is less likely to bring an appeal. As well as leading to more objective and transparent decision-making, the activities of RAUs may thus result in fewer failed appeals.

The RAUs are not a complete solution. Some documents, such as tenancy agreements, may not be capable of verification. ECOs sometimes take a pragmatic approach but this is not always appropriate. If children are coming for settlement, for example, it is important to ensure they will be satisfactorily accommodated. There perhaps needs to be a wider discussion between posts about what evidence can reasonably be requested and when. In some cases, a request for further evidence such as a local authority or property inspection report is justified but consistent practice across posts would support a perception of fairness.

Given the number of applications, it is unlikely that RAUs will ever be able to check all suspect documents, investigations may yield inconclusive results or staff may believe the document to have been fraudulently verified. It is easy to see why ECOs are reluctant to issue in

<sup>66</sup> Acknowledged by NAO (n 8 supra) p 23

<sup>67</sup> FCO Public Service Agreement Targets 2005-8, Target 9. While the development of these units demonstrates a commitment to more objective and evidence-based decision-making, it is not clear how they fit within the race discrimination framework. Entry clearance officers are subject to the Race Relations Act 1976 under s 27(1A) of that Act. It is arguable that, in the absence of a s 19D authorisation, subjecting applicants in particular countries to the added scrutiny of a Risk Assessment Unit is unlawful under s 1(a) Race Relations Act 1976 (as amended) despite the absence of a discriminatory motive (see the speech of Lady Hale in *R (on the application of European Roma Rights Centre & ors) v Immigration Officer at Prague Airport & anor* [2004] UKHL 55 starting at para 72). UKvisas argue that the function of RAUs is to gather information which is then applied to applicants irrespective of their nationality. That is correct. However, the outcome is that applicants at certain posts are subject to more in-depth investigation

such cases particularly if there are doubts about other aspects of the application. However, it is arguable that a broader perspective is needed.

Attempted fraud or lesser levels of deceit are likely to be present in any regulatory system and can never be completely eliminated. ECOs acknowledge that nearly all documents may be manufactured including those whose use they often promote such as property inspection reports. Even 'genuine' evidence may be misleading; it is not necessarily the case, for example, that a sponsor will continue working in their job. Detecting all possible deceit would require a level of investigation with endless delays and would very likely result in the refusal of many who are entitled to enter.<sup>68</sup>

The aim therefore must be not to eliminate fraud but to detect and prevent as much as possible without breaching the legal standard of proof and without undermining the other values of the service. According to UKvisas' mission statement, preventing the entry of those who do not qualify is only one part of one of its aims. The first part of the same aim is to facilitate the entry of legitimate travellers through provision of an efficient service while another objective is to deal honestly, fairly, sensitively and openly with people. Migration and its regulation do not operate in a vacuum but play their part in establishing a wider relationship between nations.

Too much emphasis on detecting fraud therefore risks other types of damage. Clearly, a balance has to be struck and the only debate is about where to strike it. It is arguable that applications which, on their face, meet the requirements of the rules should be accepted unless there is positive evidence that a document is not genuine. Such a conclusion is consistent with the legal standard and the other stated values of UKvisas and should also result in fewer appeals. It could be supplemented by thorough investigation of a proportion of applications.<sup>69</sup>

#### 4.3 'Local knowledge'

'Local knowledge' is correctly viewed as essential to good entry clearance work. Most of the ECOs that I met were interested in and sympathetic to local culture. The issue is ensuring that the knowledge that ECOs deploy is of good quality and current. As well as their own general knowledge, ECOs regard local staff as a useful resource. I observed a number of instances in which their knowledge was tapped on an informal basis. For example, an interpreter confirmed to the ECO that a particular method of sending money, although illegal, was used and the ECO therefore accepted the applicant's evidence. Another local staff member explained that the apparently simple wedding shown in the photos was in accordance with local custom.

Local staff are usually well-educated and their good faith is not in question. However, they are recruited as interpreters and administrators not as qualified experts in local matters. They will inevitably have their share of misconceptions and prejudices. There are therefore dangers in relying upon this type of informally gathered information as a basis for refusal. It would be equally wrong for ECOs to use their own inevitably partial knowledge as a reliable guide. While I did not see any examples in which local staff input was relied on directly in a refusal, the basis for assertions about local conditions was unclear. If the reasoning upon which refusals are based is to rely, even in part, upon assertions about local conditions or customs, they need to be supported by objective evidence.

68 This is tacitly acknowledged by the National Audit Office's recommendation that UKvisas should consider whether the resources devoted to forgery and intelligence work are commensurate with the risks to control (NAO n 8 supra p 10).

69 The NAO commended such a practice at Mumbai (n 8 supra p 22)

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71 The NAO supra p 5

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74 The Inde n 9 supra

75 NAO n.1



This is a longstanding issue.<sup>70</sup> I am advised that Posts A and B are in the process of developing factsheets, sourced from independent 3rd parties, to address this issue. When I visited, Post C relied on regional profiles drawn up within the post and the quality of these was doubtful. However, I am advised that they have now asked the national university to provide an independent country report. These are positive developments and, despite the expense, the outcome should be a clearer objective basis for decisions and thus more sustainable refusals.

### 5. Quality control

On a day to day basis, quality control of decision-making is principally carried out by ECMs. At Posts A and B, all appealable refusals and at Post C, all settlement refusals are checked by an ECM. I observed several serious discussions but volume makes detailed scrutiny difficult and very few refusals are, in fact, overturned by ECMs.<sup>71</sup>

Given the variable quality of refusal notices, there is benefit to ECM oversight of these as the Best Practice Guide emphasises in relation to non-settlement applications.<sup>72</sup> It is not possible to know the extent to which reviews focus upon the wording of the refusal notice at the expense of the substantive decision but, given the low rate of overturned decisions, that must be a possibility. I observed one settlement refusal at Post C where the ECO entered the refusal on the computer and in the applicant's passport<sup>73</sup> before talking to the ECM. There was clearly no expectation that the substantive decision would be changed. I have since been advised that the procedure has now changed so that the ECM always sees the refusal before the passport is stamped.

Given the rising volume of applications, the review of the written refusal can arguably have only limited impact.<sup>74</sup> It may be worth considering whether the extensive resources required for the ECM review could be more effectively deployed. One possibility, tentatively put forward here, would be to review only a sample of refusals (with perhaps a focus on inexperienced staff plus all ECOs by rotation) and, in addition, to focus on intervention earlier in the process. At posts where ECMs worked in close proximity to ECOs, I observed much informal discussion which enabled ECMs to guide ECOs towards a correct decision earlier in the process. My impression was that this informal quality control might, in practice, be more effective than the formal review both in terms of the quality of decision-making and of developing the skills of ECOs. It may be worth considering developing this approach further.

Appeals also play a role in quality control. An ECM reviews all appeals (and cases where representations have been made) to see whether they should be overturned. This may occur when the applicant has submitted further documentation or because the ECM believes the initial refusal was wrong. The former happens more frequently than the latter and ECMs advised me that they do not often overturn a decision without new evidence. The National Audit Office has recommended a more robust and objective-reconsideration of the original decision.<sup>75</sup>

70 See, for example, Lindsley n 9 supra p 58

71 The NAO report found that only 1% of decisions were overturned after review (n 8 supra p 25). See also Lindsley n 9 supra p 52.

72 Lindsley n 9 supra p 52

73 All passports are stamped when an application is made. The ECO deletes the irrelevant part of the stamp and this is what I saw the ECO do before discussion with the ECM.

74 The Independent Monitor takes a similar view saying that it probably ensures very poor refusals are rewritten, Lindsley n 9 supra p 52.

75 NAO n.8 supra p 27



In line with another National Audit Office recommendation,<sup>76</sup> posts are reviewing determinations in order to identify trends although ECOs do not usually receive feedback on the outcome of their particular decisions. Some local officers doubt the value of the exercise due to delays in receiving these and perceived inconsistencies in decisions. They also argue that many appeals succeed because new evidence is supplied or the sponsor appears at the hearing, an observation supported by the National Audit Office.<sup>77</sup> Clearly, an ECO cannot take into account evidence that is not available at the time of the decision and some applicants will never provide all the necessary evidence until the appeal hearing. The point nonetheless raises questions about the way in which expectations are communicated to applicants and should be considered earlier. Evaluating successful appeals also tends to cede to more pressing concerns notably the review of pending appeals of which there is currently a considerable backlog due to problems following the initiation of the new Asylum and Immigration Tribunal.

Ensuring effective quality control in a mass visa system is a complex matter. It is by no means certain that current procedures are the most effective possible and there is an awareness within UKvisas of the need to review quality control. Regional directors have been appointed partly with a view to considering these issues. Improvements take time to feed through the system but I am advised that there has been a recent improvement in the success rate at appeal.

## 6. Conclusion

In past decades, the politics of immigration was principally concerned with minimising the number of non-white immigrants including the family members of UK residents. The result was that immigration control became associated with a culture of suspicion and refusal that did lasting damage to relations between the service and immigrant or ethnic minority communities.<sup>78</sup> There has been considerable evolution in attitudes since then and these are reflected in the way in which the entry clearance posts that I visited set about their work. There was a strong emphasis upon ensuring that those who meet the criteria for entry are permitted to do so accompanied by a widespread wish to ensure decision-making is fair and humane. Nonetheless, ECOs are required to decide on matters that are very difficult to assess, such as future intention and the probability of compliance. They do this against a background of increasing numbers of applicants and the knowledge that forgeries and other forms of deceit are used. In some instances, described in this article, I saw ECOs rely on modes of decision-making that were reminiscent of older practices. This was not out of misplaced nostalgia but because these practices, inherited through generations of ECOs, may seem to be the most obvious or only way of identifying those applicants who do not qualify for entry. Unfortunately, this minority of cases, which often results in appeals, generates more publicity than the far greater number of well-made decisions. It helps to explain the continuing poor public perception of the service amongst certain groups.

This article has discussed some of the ways in which posts are attempting to meet the challenges of ensuring high quality decisions in a mass visa system and identified a number of areas that appeared, during my visit, to be possible factors in the minority of poor decisions. These may be summarised as problems with the skills of ECOs, difficulty in establishing an

76 NAO n.8 supra p 27

77 NAO n.8 supra p 27

78 As well as the literature mentioned in n 2 supra, for more detailed historical accounts see A Dummett and A Nicol, *Subjects, Citizens, Aliens and Others* (Wiedenfeld and Nicholson, 1990) or J Bhabha and S Shutter, *Women's Movement: Women under Immigration, Nationality and Refugee Law* (Trentham Books 1994).

objective basis for refusal, difficulty in balancing the need to prevent fraud and abuse with the other values of the service, ensuring effective communication with applicants about expectations and the challenge of effective quality control. There is a growing focus within UK visas on the need to ensure that all decisions are of a high quality. It is hoped that the observations made in this article may contribute positively towards that discussion.

*Helena Wray, Middlesex University*

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