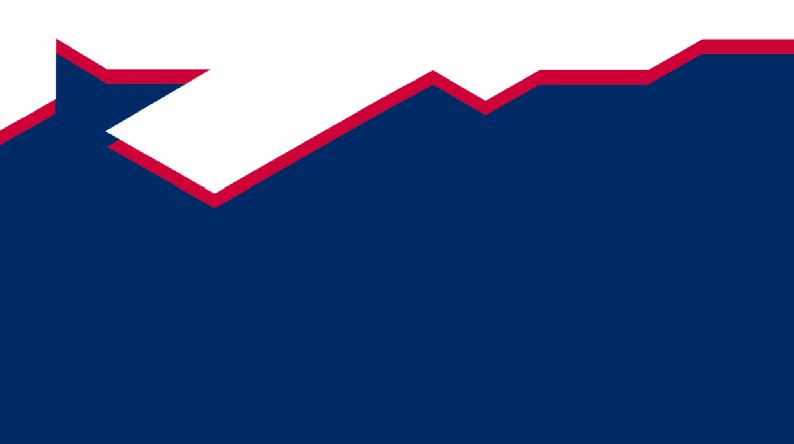# THE UK BORDER AGENCY RESPONSE TO THE INDEPENDENT CHIEF INSPECTOR'S REPORT: AN INSPECTION OF THE UK BORDER AGENCY VISA SECTION IN NEW YORK

The UK Border Agency thanks the Independent Chief Inspector (ICI) for advance sight of his report and is pleased to note positive comments made in the report, particularly on the strong customer service ethos, the overall quality of decision making and on progress in implementing recommendations from previous inspection reports.

The UK Border Agency response to the Independent Chief Inspector's recommendations:

1. Provides applicants with clear information and guidance in advance of their application about the requirements they need to meet when submitting their application: The UK Border Agency accepts this recommendation but it should be noted that it reflects existing Agency policy and guidance which we agree is an area that needs to be kept under regular review.

1.1   Following a number of previous recommendations from the ICI, the UK Border Agency developed category specific suggested supporting document guidance for the majority of visa application categories in October 2010, covering all of the most common routes. This guidance is included on the Visa Services website and is available to applicants through our commercial partners. Whilst this standardised guidance was produced to help applicants in selecting the documents that an Entry Clearance Officer (ECO) might find helpful to see when considering applications, it is not intended to be a prescriptive list. The guidance states that "it is not a list of documents that you must submit. We do not expect you to provide all of the documents listed below, it is for you to decide which documents are most relevant to your application" and that "The submission of all or any of these documents does not guarantee that your application will be successful." The guidance was further amended in September 2011 to avoid any confusion to applicants on this issue. As the guidance is not intended to be a list of evidential requirements as the ICI suggests, it is not appropriate to say that additional evidential requirements were applied.

1.2   ECOs make decisions based upon the visa application form (VAF) and information contained within it (a VAF for a visit visa application asks over 90 questions); biometric data and the results of watchlist checks and any original documentation submitted by the applicant. Applicants are rarely interviewed. This is clearly signposted to applicants throughout the application process – on the application form and through the suggested supporting documents guidance on the UK Border Agency website. The onus is on the applicant to satisfy an ECO that they meet the requirements of the Immigration Rules. Decisions are made on 'the balance of probabilities' - the legal standard. The UK Border Agency operates in 136 locations around the world and offers 76 different types of visa available to non-PBS applicants. The Agency's client base is extremely diverse and it would not be practical to insist on the same documentation from every applicant in every location. It will not always be necessary for an ECO to see all the documentation detailed in the supporting documentation guidance, if s/he is satisfied that the applicant meets the requirements of the Immigration Rules, taking into account all of the applicant's personal circumstances based on information supplied on the application form.

1.3   The UK Border Agency accepts that there were deficiencies in the way that the evidence was presented in a small number of refusal notices sampled by the ICI and has taken action to rectify this.

2. Ensures that when applicants have followed published guidance, but Entry Clearance Officers require further information to make a decision, applicants are given an opportunity to provide this: The UK Border Agency accepts this recommendation but it should be noted that the recommendation reflects existing Agency policy and guidance.

2.1   The UK Border Agency resolves the vast majority of visa applications on the basis of the application form, biometric and watchlist data, and any documentation submitted by the

applicant. Applicants are rarely interviewed. This is clearly signposted to applicants throughout the application process – on the application form and through the suggested supporting documents guidance on the UK Border Agency website. Applications are not routinely deferred to enable applicants to produce additional documents, unless in exceptional circumstances when a decision cannot otherwise be reached. The onus is on the applicant to satisfy the ECO that they qualify for entry under the Immigration Rules, and to ensure that they have prepared the application properly before lodging it.

3. Ensures it records a clear rationale for entry clearance decisions and adequate case notes generally, on its IT case working system, and adopts a consistent approach to the retention of supporting documents on file, in order to maintain a clear audit trail: The UK Border Agency accepts this recommendation.

3.1 The rationale for the refusal of entry clearance decisions is contained in the comprehensive notice that applicants receive when their application for a visa / entry clearance has been refused. The refusal notice is linked electronically to the IT case working system. There is no requirement for the ECO to record anything beyond this on the IT case working system.

3.2 For cases that are granted a visa / entry clearance, the UK Border Agency agrees that the rationale for the decision should be clearly recorded on the IT case working system. Guidance for staff in this area was updated in March 2011. The Regional Manager in New York has issued an instruction to all ECOs and Entry Clearance Managers (ECMs) reminding them of the minimum standards required for issue notes. A global reminder to all ECOs/ECMs of the standards required for these case notes will be issued by the end of September 2011.

3.3 The mandatory pass/fail ECO training course in the UK covers a session on case notes for granted/refused visas. ECMs review case notes during routine checks of decisions. At least 10% of all cases that are granted a visa / entry clearance are reviewed by an ECM.

3.4 An operational instruction was issued on 21st January 2011 to all entry clearance staff clarifying the policy on retaining supporting documents relevant to entry clearance decisions. ECOs and ECMs were reminded that they should ensure that only documents specifically required are retained, and that this should include copies of supporting documents that are directly relevant to the decision and documents addressed to the visa section. Where it is not possible to retain all such documents (for reasons such as a lack of secure storage space) they should be clearly referenced in issue notes/refusal notices. Again, adherence to this guidance will be measured through regular ECM reviews of decisions. New York visa section has been reminded of policy in this area.

4. Complies with its own guidance in relation to performing additional sponsor verification checks on a routine basis unless there are clear grounds for not doing so, with any exceptions recorded appropriately on its case working IT system: The UK Border Agency accepts this recommendation, with the caveat that it does not agree that exceptions need to be noted if an exemption has been granted to a post/region.

4.1 This relates to an instruction that was issued in April 2010 to all entry clearance staff dealing with settlement applications. This particular policy is being reviewed; any amendments to it will be issued by the end of the financial year.

4.2 The inspection team was provided with evidence during the on-site visit to demonstrate that New York had an exemption from the requirements of this instruction, and had

produced thorough guidance for staff in the region to follow on a risk-assessed basis. The exemption from the guidance was granted on the basis that the region had compiled evidence that suggested that this application base was generally low-risk in this region.

4.3 The UK Border Agency agrees that where operational guidance is not complied with, that this is noted on the relevant case working system - unless a general exception to the guidance has been granted (for example to a specific post or region).

5. Improves its administration of regional complaints, ensuring that:
  - ➢ **access to the Regional complaints inbox, facilitating the daily allocation of complaints to Entry Clearance Managers, is extended beyond the complaints champion;**
  - ➢ **all complaints correspondence is archived in a more structured fashion, and is linked to application records on the Agency's case working IT system facilitating a clearer audit trail**

The UK Border Agency accepts this recommendation.

5.1 The inspection team were provided with an overview of the complaints process which included access and management of the system. It was explained that the complaints manager has oversight of the procedures and process but that in addition the Operations Managers have access to the regional complaints inbox and sent items via Microsoft Outlook on their desktops. Following the ICI inspection, New York visa section has increased accessibility further by extending access to the Regional Complaints inbox to the Office Manager, who now acts as the Deputy Complaints Manager.

5.2 Following recommendations made during the inspection by the ICI inspection team, New York have made several improvements to the recording of complaints, including:

  - linking correspondence to the Proviso record
  - creating a central depository for all correspondence
  - creating the facility to add updates throughout the complaints process.

5.3 On receipt of a complaint, a note is now added to the applicant's Proviso record detailing the date the complaint was received, which officer is dealing with the complaint, and a brief overview of the complaint. This is updated when the response is sent by the Hub Manager to the applicant. In addition, the complaint, response, and any further correspondence is held on New York's shared drive, and archived by applicant name. Access to the folder is restricted by folder permissions to staff involved in processing complaints.

6. Amends its refund policy to ensure that cases with significant customer service failures are addressed appropriately: The UK Border Agency rejects this recommendation.

6.1 A visa application is not valid unless the application fee has been paid. This is set out in the Immigration Rules (paragraph 30) and fees regulations exampled by the Immigration and Nationality (Fees) Regulations 2011, section 37:

Consequences of failing to pay the specified fee

37. Where an application to which these Regulations refer is to be accompanied by a specified fee, the application is not validly made unless it has been accompanied by that fee.

6.2 Visa application fees are set on a cost recovery basis. Once a service has been delivered, in general terms there will be no refund of the fee. Applicants are paying for the <u>consideration</u> of their application, not a visa. Refunds are only given if no significant service delivery has occurred, for example if an applicant's biometrics have not been taken.

6.3 The concerns raised around significant customer service failure are best addressed by making a reasonable ex-gratia payment based on actual financial loss and directly related expenses. Such payments need to be properly recorded as losses and special payments to meet government accounting rules, and not netted off against income (which is in effect what a refund in these circumstances would be).

6.4 The UK Border Agency already has processes in place for handling these kinds of circumstances. Taking into account the governmental accounting rules mentioned above, it is not appropriate to amend the refund policy.

7. Ensures that all staff complete the Agency's mandatory E-learning training on equality and diversity and the appropriate records of their having completed the training are documented in the post's training log: The UK Border Agency accepts this recommendation.

7.1 The mandatory e-learning module *'Equality and Diversity'* had not been completed by all UK Border Agency staff who joined the team in New York within the past 12 months. This has now been addressed, and all relevant staff in post in New York have now completed the course. The course has been added to the list of mandatory e-learning modules that is required to be taken by new entrants. In addition, New York has requested that the Regional Training team arranges refresher courses for UK Border Agency staff on *'Equality and Diversity'* and *'Bullying and Harassment'*. This will form part of the region's training week scheduled for October 2011. The New York training log will be updated once this is completed.

8. Implements, as an example of good practice, the automated email system used in New York to update applicants on the progress at each stage of their application: The UK Border Agency accepts this recommendation but it should be noted that the time line for implementation depends on the wider roll-out of a new caseworking system.

8.1 The Customer Service Excellence assessment of New York in March 2011 also flagged the status updates New York issues as good practice. This is not a fully automated system; there are generally three emails that an applicant will receive during the application process. Applicants receive an email to advise them that the application has been received, and another to advise that the application is with an ECO for consideration. These emails are manually generated by an ECA, and copied and pasted into the IT case working system (Proviso). If the visa/entry clearance application is refused, a further manual email is sent to the applicant. If the visa/entry clearance application is granted, Proviso generates an automatic email to advise the applicant that the visa is being printed.

8.2 New York provides these updates because in the United States it does not operate with a Commercial Partner (to accept or return applications) and therefore uses this system to keep applicants informed of the progress of their application given that there is no Commercial Partner (CP) to provide this service. Applicants that apply in locations through a CP are able to track their applications through the CP's systems.

8.3   As part of the high level requirements for the UK Border Agency's Integrated Case Working (ICW) system i11 release, automated application tracking and status updates of the type provided by New York (albeit manually at present) have been identified by as a requirement. i11 is scheduled for delivery from October 2012 onwards. There are no plans between now and the rollout of i11 to make any alterations to the current case working system (Proviso) because it is due to be replaced by ICW over the course of the next 2 years. There has been no budget allocated to Proviso for improvements of this kind. There are also no plans to replicate the manual email tracking system that New York uses across other parts of the visa operation that are also not covered by CP due to the resourcing implications this would bring. Currently, approximately 85% of applications are made through a CP worldwide.

9. Extends its analysis of appeal determinations to include cases reviewed and overturned by Entry Clearance Managers, ensuring a focus on the quality of decisions helps identify trends of common errors and training needs: The UK Border Agency accepts this recommendation.

9.1   Entry Clearance Managers are encouraged to use information from a range of sources (including the ECM review process, analysis of appeal determinations, compliance exercises, reports from other areas of UKBA regarding concerns with issued visas) to feedback to ECOs on the quality of their decision making. The analysis of appeal determinations referred to is a specific New York initiative, reported on in paragraphs 6.25 – 6.29. At the time of the inspection, New York had just begun to work on the second part of this analysis, by compiling a log of key themes identified from each determination received, with a view to using this information to better inform decision quality, for example by:

- circulating the analysis to decision makers
- making it accessible on the shared drive accessed by decision makers
- running focus groups with ECOs on specific categories (eg settlement) to further refine the drafting of refusal notices

9.2   The ICI team noted limited evidence of analysis on key reasons why ECMs overturn decisions in New York and the effect of this on decision quality (if any). Anecdotal evidence from New York is that the majority of the ECM overturns at post can largely be attributed to applicants submitting documentation that they had not supplied with their application in the first instance, and/or better explaining the evidence that they had submitted. Where this evidence pre-dates the date of refusal an ECM can consider it. As such this does not necessarily mean there is a direct correlation with ECO decision quality as the effect of an appeal allows the applicant the opportunity to better explain how they meet the requirements of the Immigration Rules.

9.3   New York has agreed that an analysis of the reasons for overturning decisions in light of the grounds of appeal could be a useful exercise, and will work towards incorporating it into the overall New York appeals analysis pack by the end of October 2011. The output of this analysis will be reviewed by the UK Border Agency International Group's Appeals team, to see if this work should be replicated across the entry clearance operation; any consideration of wider dissemination of this practice will need to take account the resource implications.

10. Raises staff awareness of the risk register, making it clear how they can contribute to it, in order to ensure that managers are alerted to potential, emerging or changing risks as early as possible: The UK Border Agency accepts this recommendation.

10.1   New York has put in place the following plan to raise awareness of the risk register, and of risk in general:

- By the end of October 2011 - hold a team meeting focussing on risk and risk awareness, including a presentation on 'Introduction to managing operational risk and risk registers', making it relevant to their daily work and areas of responsibility. This will also cover the type and nature of risk that International Group seeks to identify, and show staff how they can alert management to risks they think may be relevant.

- Form a working group that will meet in conjunction with the Regional Management Team members to contribute to the main UK Border Agency Risk Register primarily with some input into regional and project specific risk registers as appropriate. This working group will consist of UK Border Agency team members from within the Americas region, with at least one representative from each post.

- Work to identify clear channels whereby staff can:

    (a) access information – i.e. current and predicted risks, contingencies

    (b) communicate and contribute their feedback on it.

- Institute a standard agenda point at the weekly team meetings to update staff on any newly identified risks or changes in risk level to those already detailed on the register(s).

10.2   UK Border Agency International Group's Risk and Governance team will be holding further workshops with regional and UK risk leads to raise awareness on risk by the end of 2011. The output from these workshops will be used to cascade risk awareness down from the risk leads in each region to all International Group staff.