

# Considering human rights claims in visit applications

Version 1.0

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# **Considering human rights claims in visit applications**

This guidance explains the process for considering human rights claims in visit applications overseas and the factors to be taken into account when reaching a decision on such claims.

This guidance must be read together with the rights of appeal guidance, the visit guidance and the considering human rights asylum instruction (AI).

## **When to use the considering human rights claims in visit applications guidance**

This guidance is for entry clearance officers (ECOs) to use when they consider visit applications overseas. It is only relevant when the visit application is made as part of a standard visit application on the:

- general/standard visit online application on visa4UK, and the applicant has completed the ‘additional information’ section
- visitor online application on GOV.UK (where this is available) and the applicant has completed the ‘extra information’ section
- General Visitor Form (VAF1) or the consolidated visitor form which replaces this, and the applicant has completed Part 9

Part 9 allows the applicant to set out any other information that should be considered as part of the application. This may include a human rights claim.

This guidance explains how to decide whether a human rights claim has been made, how to consider any human rights claim made and the process to be followed.

If the application made meets the requirements of the visitor rules, it must be granted under those rules.

If the application that is granted under the visitor rules also includes a human rights claim, that claim does not need to be decided. As entry clearance has been granted, no breach of human rights can arise.

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## Considering HR claims in visit applications: Version control and contacts

This page tells you about this version of the considering human rights claims in visit applications guidance and who to contact if you have any queries.

### Contacts

If you have any questions about the guidance and your line manager or senior caseworker cannot help you or you think that the guidance has factual errors then email the appeals policy team.

If you notice any formatting errors in this guidance (broken links, spelling mistakes and so on) or have any comments about the layout or navigability of the guidance then you can email the guidance rules and forms team.

### Clearance

This version of the guidance was cleared:

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- published for Home Office staff on **24 April 2015**
- this version approved by **Sally Weston, Deputy Director, Immigration and Border Policy Directorate**
- approved on **23 April 2015**

### Related content

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## **Has a human rights claim been made?**

This page provides a summary of the process for deciding whether a human rights claim has been made in a visit application and, if so, how to consider that claim.

If you receive a standard visit application where additional/extra information or Part 9 has been completed, you must consider the following:

1. Does the application say that it is a human rights claim?

If no, then proceed to step 2.

If yes, but no reasons are given refuse the claim with no right of appeal.

If yes, and supporting reasons are given then proceed to step 3.

2. Does the application amount to an implied human rights claim if it does not say that it is a human rights claim?

If no, then refuse the claim with no right of appeal.

If yes, then proceed to step 3.

3. Are the matters raised capable of engaging human rights?

If no, then refuse the claim with no right of appeal.

If yes, then proceed to step 4.

4. Does the human rights claim have any prospects of success?

If no, then refuse the claim with a right of appeal.

If yes, then refer the claim to the Referred Cases Unit (RCU).

See links for detailed guidance on each step.

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## **Step 1: Does the application say this is a human rights claim?**

This page explains what to do when a standard visit applicant provides additional or extra information which states that it is a human rights claim.

The form may state that the application being made is a human rights claim, for example by referring to a specific article of the European Convention on Human Rights (ECHR) or a specific human right such as the right to family life.

The fact that an application states that a human rights claim is being made does not determine whether the application is in fact a human rights claim. This distinction is important because it determines whether a right of appeal is available against the refusal of the application.

If the application does not provide any supporting reasons or further detail about the human rights claim, for example if it says no more than “I am making a human rights claim” or “It is a breach of my rights under Article 8 not to allow me to come to the UK”, the application is not a human rights claim.

If there are no other grounds to grant the application, for example the visitor rules are not met, you must refuse the application and serve decision notice GV51 Visitor (NRA). There is no right of appeal against this refusal.

You must use the following form of words:

“You stated in your application that **[insert as appropriate]**. A mere assertion without an indication of how your rights are affected does not amount to a human rights claim. Therefore this decision is not a refusal of a human rights claim and there is no right of appeal against this refusal.”

If the application states that it is a human rights claim, and the applicant provides supporting reasons or evidence, you must go on to consider that supporting material to establish whether a claim has been made that is capable of engaging human rights. This is the case even if the supporting reasons are weak, irrelevant or very brief.

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### **Related external links**

## **Step 2: Does the application amount to an implied human rights claim?**

This page explains how to decide whether an implied human rights claim has been made where additional or extra information has been provided but the application does not state that a human rights claim has been made.

If additional or extra information has been provided as part of a standard visit application, and does not state expressly that a human rights claim is being made, you will need to consider what has been provided to understand the applicant's reasons for wanting to enter the UK and decide whether those reasons are capable of amounting to a human rights claim.

A human rights claim can be implied rather than express. It is not necessary for the application form to state expressly that a human rights claim is being made in order for the application to amount to a human rights claim. However, as visit visa applications do not generally engage human rights you should not imply a claim unless the information provided clearly indicates there is an implied claim.

You should refer to the [Considering human rights – asylum instruction](#) which provides a summary of all the human rights protected by the European Convention on Human Rights. This will help you to identify whether what is being said in the General Visitor Form relates to one of those rights and therefore may amount to an implied human rights claim.

If an implied human rights claim has not been made and there are no other grounds to grant the application, for example the visitor rules are not met, you must refuse the application and serve decision notice GV51 Visitor (NRA). There is no right of appeal against this refusal.

If an implied human rights claim has been made, you must consider whether the implied claim is [capable of engaging human rights](#).

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## **Step 3: Are the matters raised capable of engaging human rights?**

This page explains what is meant by ‘engaging human rights’ and how to consider whether human rights are engaged.

The starting position for considering a visit application is that a visit does not generally engage human rights.

A human right is engaged when the basic elements of a claim are made out. For example, in order to engage Article 8 the claim must demonstrate a family relationship and the relationship in question must be one that is capable of engaging the right to respect for family life. The refusal of the claim must be capable of indicating a failure to comply with the positive duty to respect family life. It does not mean that the claim is bound to succeed.

If the matters raised are not [capable of engaging human rights](#), no human rights claim has been made and the application can be refused with no right of appeal.

The UK’s obligation in respect of human rights in the majority of cases only extends to safeguarding those rights within the UK. In most cases, an individual who is overseas will not succeed in arguing that the UK must act to prevent a breach of his or her human rights. There are exceptions in certain specific circumstances, for example where an applicant’s Article 8 claim is engaged where the applicant has family in the UK, as in [Beoku Betts v SSHD \[2008\] UKHL 39](#). This guidance gives further examples of human rights that are capable of being engaged overseas.

### **Article 8 (private and family life)**

The only relationships that may engage [Article 8](#) in visit applications are:

- spouse (or other life partner)
- parent (where applicant is minor child)
- minor child.

Even where the claim is based on one of these relationships, the starting point is that Article 8 is not generally engaged where a visit visa is refused.

For example, Article 8 is not engaged in the following circumstances:

- an applicant applies to visit the UK temporarily but there are no reasons why the UK based family members could not visit the applicant
- the applicant wishes to renew a private life established in UK

The UK has a positive duty to respect the right to family life. To decide whether refusal of the visit visa is capable of indicating that the UK had not complied with that positive duty to respect family life you should consider whether:

- the person the applicant intends to visit has ever visited, or could visit, the applicant in their home country or a third country

- whether the circumstances of the person in the UK mean that travel is not possible for them
- family life exists for the applicant in their home country, with other family members who are residing there (see [ECO \(Dhaka\) v SB \[2002\] UKIAT 02212](#))

For example, if a minor child of separated parents wishes to visit a parent living in the UK and that parent is unwell so that they cannot travel, then refusal of the visit visa could amount to a failure to comply with the positive duty to respect family life

Circumstances that may displace the presumption that a visit application does not engage Article 8 are rare and will be exceptional. You can only decide whether exceptional circumstances exist by looking at the application as a whole

### **Article 6 (right to a fair trial)**

If there is a court order requiring the applicant to be admitted to the UK for the purpose of court proceedings, [Article 6](#) is engaged.

Without a court order, the starting point for considering a visit application is that Article 6 is not engaged unless exceptional circumstances exist.

Article 6 is not engaged when the applicant seeks to enter the UK to:

- participate in legal proceedings - the applicant can pursue legal proceedings from overseas by instructing solicitors in the UK
- attend his own appeal against an immigration decision - being required to appeal against an immigration decision from outside the UK is not a breach of Article 6 ([Maaouia v France \[2000\] EHRR 455](#))

Article 6 may be engaged when the applicant is:

- bringing legal proceedings against the Secretary of State for the Home Department (SSHD), for example seeking damages for unlawful conduct, and has been removed before the conclusion of those proceedings and there is an allegation of bad faith against the SSHD in respect of the removal ([Quaquah \(1999\) EWHC \(Admin\) 100](#))
- required to give oral evidence in proceedings, Article 6 may be engaged - however, the entry clearance officer (ECO) should look for evidence that this is the case before deciding that Article 6 is engaged

### **Article 14 (prohibition of discrimination)**

This is not a freestanding right. Discrimination can only be alleged in the context of another human right. Therefore a claim that relies only on [Article 14](#) cannot engage human rights.

If the matters raised in the application do not engage human rights and there are no other grounds to grant the application, for example the visitor rules are not met, you must refuse the application and serve decision notice GV51 Visitor (NRA). There is no right of appeal against this refusal.

If the matters raised do engage human rights, you must go on to consider whether [the claim has any prospect of success](#).

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## **Step 4: Does the human rights claim have any prospect of success?**

This page explains how to assess a human rights claim's prospects of success and what action to take when that assessment is complete.

### **Why is it important to decide whether the human rights claim has any prospect of success?**

You must decide whether the human rights claim clearly falls for refusal or whether it has prospects of success and may be granted. This is important because it determines whether you (the entry clearance officer (ECO)) can decide the claim or whether it must be passed to the Referred Cases Unit (RCU) for a decision.

If a human rights claim is made in the additional or extra information section (Part 9 and equivalents) of a standard visitor form and entry clearance may be granted on the basis of the human rights claim and not under the visitor rules, you must refer the case to the RCU. Any entry clearance that is granted must be granted by RCU. This is because an ECO cannot generally decide to grant entry clearance outside the rules.

An ECO can refuse entry clearance when it is requested outside the Immigration Rules.

You should refer to the [Rights of Appeal guidance](#) for full details on the process to be followed.

When you decide whether a claim has prospects of success, you must consider each case on its own facts, taking all the evidence into account.

The decision letter must set out the consideration undertaken and the reasons for the conclusion reached as it will form the basis of the defence of the case at the appeal.

The standard of proof that the ECO must apply is "on the balance of probabilities". This means that it is more likely than not that what the applicant claims is true.

### **Article 8 – lack of respect for private or family life**

First, consider whether a decision to refuse a visit visa would breach the UK's positive duty under [Article 8](#) to respect the family life of person(s) to be visited (see [ECO \(Dhaka\) v SB \[2002\] UKIAT 02212](#))

You should consider the following:

Article 8 does not impose a general obligation on the UK to respect an individual's choice of country of residence. Refusal of a visit visa will not generally engage human rights. The extent to which the UK is obliged to allow relatives of UK residents to enter the UK will vary depending on the circumstances of the people involved and must be balanced against any public interest factors in refusing entry, including the fact the person does not meet the requirements of the rules.

## **What does the family life consist of?**

If the relationship has primarily consisted of remote communication (phone, e-mail, etc) the refusal of entry clearance cannot be said to interfere with the relationship.

## **Can the relationship be maintained by other means?**

You must consider if there are reasons why the relationship cannot be maintained by other means. For example:

- could the UK based person travel to see the applicant in their home country?
- is there a history of the applicant being visited by this person in their home country?
- Is a visit necessary to maintain the current relationship?

## **What would be the effect of refusing a visit visa?**

If refusing a visit visa would have only a minimal impact on the family life in question, there will be no breach of the positive duty under Article 8. The case of [VW\(Uganda\) \(2009\) EWCA Civ 5](#) confirms that a failure to comply with the positive duty under Article 8 that is merely ‘technical or inconsequential’ is not actual interference. Examples of minimal or no impact would be:

- where the family life in question is not based on personal contact
- if the person to be visited frequently visits the applicant’s home country
- if the person to be visited could visit the applicant’s home country

## **Article 8 - proportionality**

If you decide that the refusal of entry clearance could amount to a failure to comply with positive duty to respect the applicant’s Article 8 rights you must consider whether a decision to refuse the claim is proportionate. This means you must balance the competing interests of the individual who has applied for entry to the UK against the interests of the community.

## **Does the applicant meet the Immigration Rules?**

The applicant’s ability to meet the requirements of the Immigration Rules is relevant to the proportionality of the decision to refuse a visit visa.

It would generally be proportionate to refuse entry clearance if the applicant did not meet the requirements of the rules even if that did mean that the UK was not complying with the positive duty to respect their family life. Maintaining effective immigration control is in the public interest. The Immigration Rules set out the requirements that must be met by visitors. Those requirements are established in order to ensure that decisions made to grant visit visas are in the public interest, for example, that the person must be a genuine visitor, can be maintained and accommodated without accessing public funds; does not intend to breach the conditions of their leave and there are no suitability grounds for refusal. Where those

requirements are not met, it is not in generally the public interest for the individual to enter the UK.

For example:

**Has the applicant presented inaccurate information or omitted something material from the application?**

If the applicant has omitted something material from the application it is proportionate to refuse entry clearance because the ability to operate an effective immigration system, which is in the public interest, requires that applicants engage in good faith with the immigration system.

**Does the applicant have a history of breaching immigration law?**

Maintaining effective immigration control is in the public interest and it is likely to be proportionate to refuse a visit visa to someone who has demonstrated a failure to comply with immigration law.

**Are there any suitability considerations which are relevant?**

If the applicant is a threat to public order, or a risk to national security, it is likely to be proportionate to refuse a visit visa.

**Article 6**

You must consider whether a decision to refuse a visit visa would interfere with the [Article 6](#) rights of the applicant.

If the applicant has demonstrated that there are exceptional circumstances which engage Article 6 (See [Step 3: Are the matters raised capable of engaging human rights?](#)) it is for the applicant to show why they cannot instruct a UK lawyer to represent them and why their presence in the UK is essential to pursue these proceedings.

If Article 6 is engaged because the applicant is required by court order to give evidence in proceedings in the UK, you must review the court order the applicant relies on to understand its terms, in particular whether the presence of the applicant is required in the UK or whether evidence could be given by video link or witness statement.

If the applicant has not set out why this would not be possible or the order does not unequivocally require the applicant's presence in the UK for the legal proceedings, you are likely to be entitled to conclude that there is no interference with Article 6.

If the applicant presents a court order that unequivocally requires attendance at legal proceedings in the UK, you should seek legal advice on whether a visit visa must be granted. Public interest reasons to refuse a visit visa in these circumstances would include a risk to public order, national security or immigration control (for example if the individual has a clear history of breaching immigration law).

## **Article 14**

The applicant can only rely on [Article 14](#) if another human right is also engaged.

You must consider whether a refusal of a visit visa would be discriminatory. This means you must consider whether the way the human rights claim has been considered treats the applicant less favourably on the basis of one of the protected characteristics. The protected characteristics are sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. It is for the applicant to set out why this is the case.

### **Action following assessment of prospects of success**

If you decide that a human rights claim has been made but the decision to refuse a visit visa will not cause an interference with the human right in question, you must refuse the claim, providing reasons and serve decision notice GV 51(ROA). There is a right of appeal against this refusal.

If you decide that a human rights claim has been made but the decision to refuse a visit visa is proportionate (for Article 8 claims) or does not interfere with the applicant's human rights (Articles 6 and 14), you must refuse the claim, providing reasons and serve decision letter GV 51(ROA). There is a right of appeal against this refusal.

If you decide that the human rights claim may have prospects of success, it must be passed to RCU who will consider the claim and advise the post where the application was made on whether a visit visa should be granted.

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