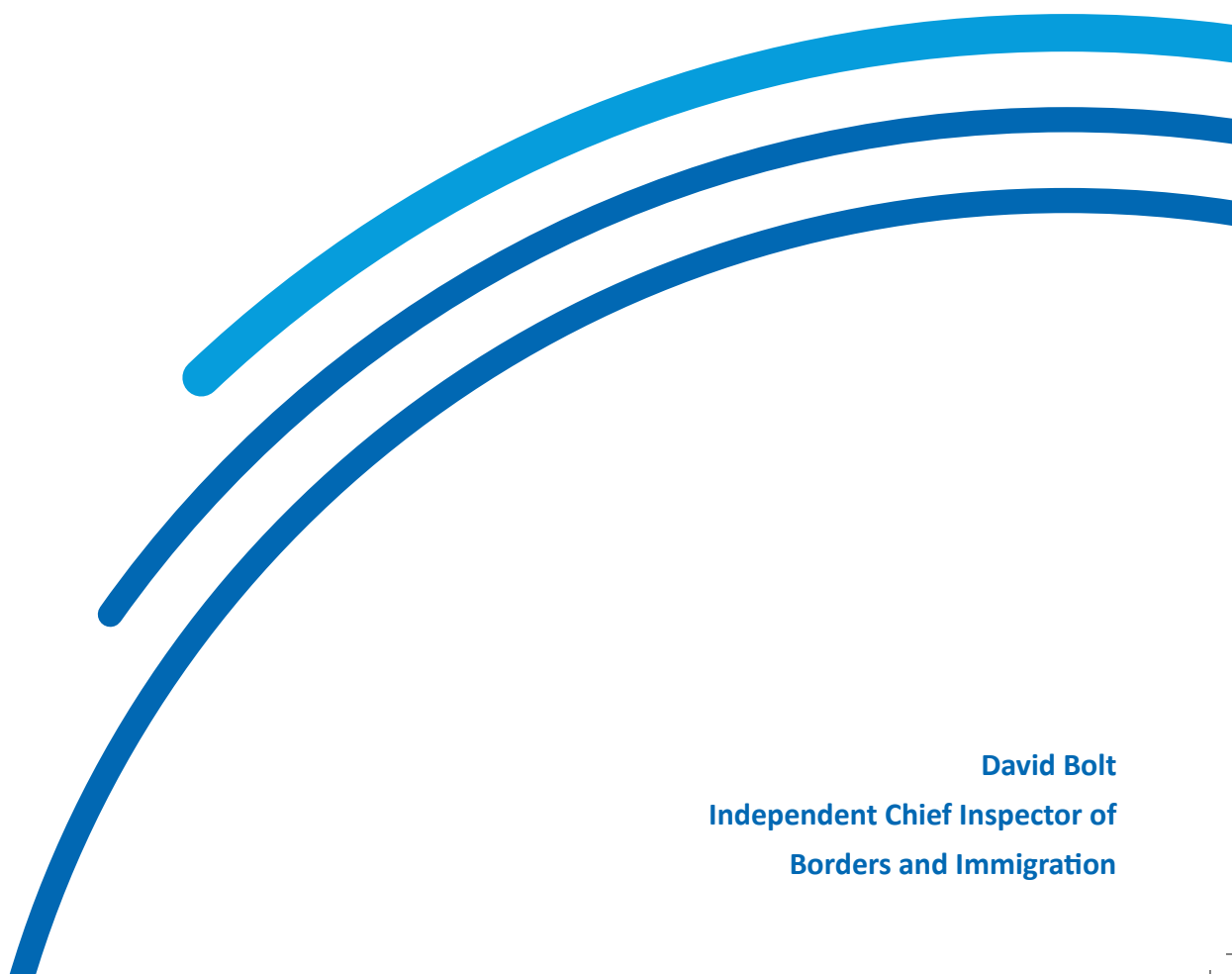




# An inspection of family reunion applications

January to May 2016



**David Bolt**  
Independent Chief Inspector of  
Borders and Immigration



# **An inspection of family reunion applications**

**January to May 2016**

Presented to Parliament pursuant to Section 50 (2) of the UK Borders Act 2007

September 2016



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# Introduction by the Independent Chief Inspector

## Foreword

Dependent family members of individuals ('sponsors') who have been granted asylum or five years Humanitarian Protection leave to remain may apply to the Home Office to be reunited in the UK. These are referred to as 'family reunion' applications. Under the Immigration Rules, eligibility for family reunion is limited to spouses, civil partners, unmarried/same sex partners and biological children under age of 18, who formed part of the family unit at the time the sponsor fled to seek asylum.

While family reunion applications account for only a small part of overseas visa applications, the number has been increasing as the number of asylum applications has risen. At the same time, stakeholders from the asylum and refugee sector have raised concerns about the efficiency and fairness of the Home Office's management of family reunion applications. They have suggested that the process is unnecessarily protracted, that applicants are being held to excessively high thresholds to establish their identity, and that the requirement to produce documentary evidence of identity and of the claimed relationship to the sponsor is impacting disproportionately on applicants from areas of conflict.

In light of these concerns, the inspection examined how Family Reunion was working by focusing on the three visa posts (Amman, Istanbul and Pretoria) with the highest numbers of applicants, looking particularly at the nationalities (Syrians, Iranians, Eritreans, Somalis and Sudanese) that had made the most applications and were most often refused. Because stakeholders had specifically raised the handling of Kuwaiti Bidoon applicants in Amman, the inspection also looked at this.

Overall, the inspection found that the Home Office was too ready to refuse applications where it judged that the applicant had failed to provide sufficient evidence to satisfy the eligibility criteria, when deferring a decision to allow the applicant to produce the 'missing' evidence might be the fairer and more efficient option. This was particularly the case when the key piece of evidence was a DNA test establishing the relationship to the sponsor was as claimed, and the Home Office's withdrawal of commissioned and funded DNA testing in 2014 appears to have been a major cause of the increase in first-time refusals for certain nationalities.

The Home Office needs to make improvements in a number of areas, and the report makes ten Recommendations. Collectively, these are aimed at helping the Home Office to reassure applicants, stakeholders and others that it recognises the particular challenges surrounding Family Reunion applicants, and that it manages applications not just efficiently and effectively, but thoughtfully and with compassion.

The inspection report was sent to the Home Secretary on 18 July 2016.



# 1. Purpose and scope

1.1 This inspection examined the efficiency and effectiveness of the Home Office's handling of family reunion applications, specifically:

- the clarity and usefulness of Home Office guidance for staff and applicants, and the consistency with which the guidance is applied;
- the treatment of supporting evidence (Home Office records, documents and DNA results);
- the quality and timeliness of Home Office decisions;
- the Home Office's processing of appeals and reapplications; and
- the handling of Kuwaiti Bidoon applications.

1.2 Inspectors:

- reviewed Home Office data provided by UK Visas & Immigration (UKVI), including performance data;
- examined relevant Immigration Rules and the Home Office guidance available to staff and applicants;
- sampled 191 family reunion case files (from the Visa Sections in Amman, Istanbul and Pretoria);
- interviewed managers and staff from these visa sections who were directly involved with handling family reunion applications;
- consulted external stakeholders from the asylum and refugee sector who had an interest in the Home Office's handling of family reunion applications; and
- interviewed family reunion applicants and sponsors in the UK.

1.3 Because of the small numbers involved, the inspection did not examine family reunion applications made in the UK<sup>1</sup>.

1.4 On 21 April 2016, the inspection team provided the Home Office with its high-level emerging findings.

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<sup>1</sup> Figures are provided in paragraph 4.7.

## 2. Key findings

- 2.1 The consideration of family reunion applications<sup>2</sup> is a 'paper-based' assessment, where the decision is reliant on the ECO being satisfied 'on the balance of probabilities' from the documentary evidence provided with the application and/or already on record with the Home Office, that the applicant is eligible and meets the relevant tests. The latter include proof of identity and proof that the relationship to the UK sponsor is as claimed.
- 2.2 Stakeholders in the refugee and asylum sector have highlighted that for some family reunion applicants, who may be fleeing areas of conflict or fragile states, or who are in refugee camps, it can be challenging to produce the documents listed in the Home Office guidance. Of the nationalities reviewed in this inspection, Somalis, Eritreans and Syrians appeared to face the greatest difficulties in providing documentary evidence. In the case of Syrian applicants, the inspection found some differences in the quality of the documents provided with applications made in Amman and in Istanbul. Applicants in Istanbul relied more heavily on providing non contemporaneous documents, which ECOs considered offered little evidential value.
- 2.3 While the Home Office recognised that it was not always possible for applicants to provide the documents listed in its guidance, its position was that the onus rests with the applicant to demonstrate that they meet the requirements of the immigration rules. As a result, while there is the provision to defer applications while the applicant is given the opportunity to provide further evidence, this was not normal practice.
- 2.4 The inspection identified three 'quick wins' where the Home Office could improve the efficiency and effectiveness in dealing with family reunion applications, particularly where the applicant was struggling to provide the listed documentary evidence.
- 2.5 The first concerns use of its own records, specifically the asylum initial screening record and asylum Interview record for the UK sponsor. These records may contain details of the refugee's family, such as names and dates of birth, which would corroborate information provided by the applicant. However, the inspection found a number of problems:
  - the details were not always captured during the asylum interviews as, according to staff at the visa sections visited, the staff conducting the asylum interviews were not aware of the potential importance of such information to other colleagues;
  - the records were retained as paper files, which had to be requested, located, photocopied and sent in hard copy to the visa section; and
  - even when this process worked smoothly it took a matter of weeks for the records to arrive, but in some cases the ECO had to send reminders, often more than once, and based on file sampling a significant proportion of requests were never answered and the ECO proceeded without them (having delayed the decision to no purpose).

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<sup>2</sup> The full criteria for Family Reunion for are set out at paragraph 4.2.

- 2.6 The second concerns the use of interviews. The family reunion process for overseas applications does not normally include the interviewing of applicants and/or sponsors. While some managers and staff at the visa sections visited saw the potential value of interviews, this view was not universally held. However, the argument is academic unless ECOs are given access to interpreters, and encouraged to use them to interview applicants to clarify areas of doubt.
- 2.7 The third, and most important area for improvement, is the use of DNA testing. In June 2014, the Home Office stopped funding DNA testing, looking to place the onus on the applicant and to bring family reunion applications into line with other application types. The effect has been to delay issuing entry clearance to applicants who qualify for family reunion. Prior to June 2014, ECOs were able to commission DNA tests and did so routinely for applications, including minors, that did not provide sufficient documentary evidence in support of the claimed relationship. Testing was often used with Somali and Eritrean nationals, for example. Since 2013, refusal rates for Somali and Eritrean applicants have doubled, and while other factors may have played a part, it is reasonable to assume that the change to DNA testing has been a major cause.
- 2.8 Regardless of the merits of the Home Office's arguments, financial and other, for stopping funded DNA testing, this was a communications failure. Although reference to DNA testing was removed from guidance for (settlement provisions) children, the Home Office had not updated published guidance for family reunion applicants, issued in August 2012 and still available on the gov.uk website, which informs applicants that it will commission DNA testing where a relationship as claimed has not been established. Meanwhile, the Guide to Supporting Documents did not refer to DNA evidence. The Home Office's rationale for this omission was that the immigration rules do not require applicants to provide DNA evidence, which is at best unhelpful, as well as being inconsistent as these rules do not require other documents that are listed.
- 2.9 In the majority of family reunion cases sampled, the Home Office's decision to whether to issue entry clearance or refuse the application was 'correct' in terms of the Immigration Rules and Home Office guidance. However, the inspection identified some areas for improvement.
- 2.10 There were a number of cases where supporting evidence had been misread or misinterpreted, or where not all of the positive evidence had been considered when deciding to refuse. In other cases, failure to retain copies of relevant documents and inadequate record keeping, particularly in Pretoria, meant that it was difficult to assess whether decisions were correct, the more so because there were applications which appeared from the record to have provided similar supporting evidence, some of which succeeded and others which were refused.
- 2.11 This has been a recurring problem, which has been identified by inspectors on many previous occasions. Most recently, the 2015 inspection of family visitor visa applications recommended the retention of relevant supporting documents or notes that enabled a full audit of decisions. The Home Office accepted this recommendation, indicating that it was investigating an electronic solution. In the meantime, it needs to ensure practice is improved and is consistent across all visa sections.
- 2.12 In some sampled cases, minor applicants had been refused for failing to provide evidence of their contact post-flight with the UK sponsor. While this test is appropriate when assessing whether there is a subsisting relationship between the sponsor and an adult applicant (their spouse or partner), since it goes to their intention to continue family life in the UK, it is an incorrect test for minors, particularly younger children, and should not be relied upon as a reason for refusal.

- 2.13 ECOs had refused some applications because the applicant had not provided documentary evidence that was not specified in the guidance. Whether or not it amounts to procedural unfairness, this is clearly unreasonable. If deciding that the applicant needs to provide evidence that they could not have been expected to provide by following the guidance, rather than refuse, ECOs should defer the decision and give the applicant the opportunity to provide further evidence.
- 2.14 From the cases sampled, refusal notices largely met UKVI's decision quality standards, and generally showed an improvement from previous inspections. However, a significant number did not use plain English, used irrelevant or incorrect 'cut and paste' paragraphs from other notices, or failed to acknowledge positive evidence provided by the applicant, and were therefore not balanced or helpful in terms of understanding why the application had been refused or what more evidence might be required to support any reapplication.
- 2.15 The three Visa Sections were inconsistent in the application of paragraph 320 of the Immigration Rules ('General grounds for refusal'). Amman and Istanbul were applying it, while Pretoria was not, apparently on instruction from London. One effect of not applying paragraph 320 was that Family Reunion applicants faced no sanctions if they made false representations or submitted forged documents.
- 2.16 The process for considering family reunion applications recognised that there might be 'exceptional circumstances' or 'compassionate factors' that called for an application to be considered outside the Immigration Rules. ECOs were required to refer such cases to the RCU. None of the cases sampled were referred, despite some appearing to merit consideration. In particular, the treatment of married women under the age of 18 appeared to take no account of relevant 'compassionate factors'. The inspection highlighted a particularly egregious case where the wife, aged 16, with two children, aged 18 and eight months (at the time of file sampling), was about to be left in Syria without family support. She was refused twice, without reference to the RCU, as the immigration rules require both the spouse applicant and UK sponsor to be aged 18 at the time of the application.
- 2.17 There was room to improve assurance of decision quality. Targets and expectations around ECM reviews varied between the three visa sections, reflecting the individual 'Review to Risk' strategies. This included different approaches to Syrian applicants in Amman and in Istanbul, which needs clearer justification. Based on file sampling, the visa sections were not meeting their own requirements for mandatory ECM reviews, and the reviews themselves were not always effective in spotting errors. More fundamentally, since the 'Review to Risk' concept is based on minimising immigration abuse, it is questionable whether it is sufficient in family reunion cases to ensure that individuals who qualify and are in need of protection receive the correct outcome, particularly as reviews were focused mostly on successful applications.
- 2.18 Most of the cases sampled received a decision within the published customer service standards of '95% of decisions within 60 working days', and the three visa sections said they were actively working towards considering applications within shorter internal targets of 20 to 30 days. None of the sampled cases exceeded the published maximum time of 120 working days. However, achievement of published targets for timeliness masked inefficiencies and poor practices, including recording cases as 'complex' and therefore outside the 60 day service standard when the delay was caused by other parts of the Home Office failing to respond promptly to queries and requests from ECOs, particularly in providing asylum Interview records. As well as dealing with the root causes of these delays, there needs to be better policing of the use of 'complexing'.

- 2.19 Refusal of family reunion attracts a full right of appeal. Between 2014 and 2015 the number of appeals declined sharply. The likely reason is that reapplication, which is gratis, is much quicker (appeals were taking on average between nine and 11 months (186 and 222 working days) to be heard). Over the same period, there was a noticeable rise in allowed appeal and decision overturned rates. However, of the three visa sections inspected, only Istanbul had identified this and had done any analysis. This had shown that in the majority of cases where the appeal had been allowed, or where the Home Office had overturned the decision prior to the appeal hearing, it was because new evidence had been provided, particularly DNA evidence. Based on file sampling, this also held true for successful reapplications.
- 2.20 While 'correct' according to the immigration rules and guidance in most cases, the Home Office's current approach to family reunion applications is too often failing in practice to deliver the Home Office's ambition to get decisions 'right first time'. The re-working of reapplications and handling of appeals is at best inefficient, and it is in the Home Office's own interests to do more to ensure that applicants provide all necessary evidence, including DNA evidence, with their first application. It is important, in the interests of applicants, some of whom will be living in difficult circumstances while awaiting a decision, not to prolong the process needlessly.

### **Kuwaiti Bidoons**

- 2.21 Since 2013, there have been lengthy delays in the processing of family reunion applications from Kuwaiti Bidoons. The delays came about because the Home Office had been conducting a protracted investigation into suspected widespread immigration abuse by individuals who had applied at the Amman visa section, claiming falsely to be Kuwaiti Bidoons. The investigation, which had involved the Jordanian and Kuwaiti authorities, and the US Embassy in Amman, had cast serious doubt on whether the applicants were in fact Kuwaiti Bidoons, and these doubts, which had extended to some sponsors who had been granted asylum in the UK on that basis, were eventually confirmed.
- 2.22 Over the period, a number of cases had gone to appeal and had been allowed, while in other cases the Home Office had informed the first tier tribunal (immigration and asylum) that it had overturned the original refusal decision and therefore the appeal hearing was not needed. However, the Home Office did not issue entry clearance in these cases as directed, but continued its investigations and ultimately upheld the refusals. During this time, applicants were left in limbo, some for over two years, with no communication from the Home Office.
- 2.23 The investigation of fraud is an important function of the Home Office, although inevitably it results in delays in making decisions about applications. The delay affects all applicants, both non-genuine and genuine. It is particularly acute when the Tribunal has already allowed an appeal and the failure or refusal to act upon the tribunal's decision may give the appearance of being contemptuous. It is therefore important for the Home Office to develop procedures, including adequate record keeping, so that fraud can be detected and established quickly, including where this involves responses from foreign sources who cannot be compelled to provide information to the Home Office's deadlines.
- 2.24 In this instance, the inspection did not look in detail at the investigation, so it is difficult to say whether it could have moved more quickly. However, because the visa section had not followed guidance in relation to the retention of supporting documents, applicants had to be asked to resubmit their documents (so that they could be examined for evidence of fraud) and this will have added to the time taken.

2.25 Whether a delay in acting upon a tribunal's decision is reasonable or not can be determined only on a case by case basis. The tribunal that has made the decision has no longer any residual function and, the Inspectorate understands, no general enforcement powers. It is left to the individual to pursue the Home Office, at first in correspondence and then, if necessary, by way of judicial review.

## 3. Summary of recommendations

### The Home Office should:

1. In relation to the asylum screening and interview records, ensure that:
  - Asylum caseworkers are aware of the importance of capturing details of the claimant's family members; and
  - it overhauls the process for retrieving interview records, so that they are made available in good time to whoever needs them.
2. Ensure that interviewing of family reunion applicants and/or sponsors is a practicable option for visa sections by improving access to interpreters, and review and provide guidance regarding the use of interviews to ensure best practice is consistently applied.
3. Review its approach to DNA evidence in family reunion cases, including:
  - funding for commissioned DNA testing where the Home Office is unable to verify documents provided by the applicant;
  - deferral rather than refusal where the absence of DNA evidence is the only barrier to issuing entry clearance; and
  - update guidance so that it accurately reflects the approach and applicants are clear in what circumstances they should provide DNA testing results with their application.
4. In terms of decision making in family reunion cases:
  - ensure that ECOs give full consideration to all available evidence;
  - ensure that evidence relied upon in the decision is either retained or properly evidenced in the issue notes or refusal notice;
  - ensure that the case record and/or refusal notice fully explains the rationale for the decision; it overhauls
  - ensure that ECM reviews are effective.
5. In relation to family reunion applications, review, issue clear guidance, and ensure consistent application by decision makers of:
  - 'General grounds for refusal' (paragraph 320 of the immigration rules) that might apply; and
  - 'exceptional circumstances' or 'compassionate factors', in particular (but not limited to) when considering applications from spouses under the age of 18.
6. Reconsider whether assurance based on a 'Review to Risk' approach gives sufficient weight to the potential humanitarian protection consequences of family reunion refusals. In particular, ensure trends and issues associated with particular nationalities are identified and monitored.
7. Review its internal processes, in particular the 'hand offs' between different functions, to reduce the time taken to deal with family reunion applications.

8. Ensure that family reunion applications are not wrongly recorded as 'complex' when delays are of the Home Office's making.
9. Reduce the number of family reunion appeals and reapplications by ensuring that guidance to applicants clearly signposts what evidence they should provide with their application, and getting the decision 'right first time'.
10. In relation to those Kuwaiti Bidoon family reunion applications from 2013 to 2015 where the Home Office has not implemented the Judges' ruling or its own undertakings to issue entry clearance, ensure that it responds quickly when reasons for the delay are sought by those affected and that it provides as much information as it reasonably can, bearing in mind the sensitive nature of the investigation.



## 4. The inspection

### Background

- 4.1 Home Office ('SET10') guidance<sup>3</sup> in relation to family reunion applications is available on the gov.uk website. This states that:

*'UK Visas and Immigration recognises that families become fragmented because of the speed and manner in which a person seeking asylum has fled to the UK. Family reunion is intended to allow dependent family members to reunite with their sponsors who are recognised refugees, or who have 5 years Humanitarian Protection leave in the UK.'*

### Eligibility

- 4.2 The guidance refers to the Immigration rules 352A-352FI, which lay out the criteria for family reunion applications in detail. Under these rules, only 'pre-flight' family members are eligible to apply for family reunion. Pre-flight family members are defined as those who formed part of the family unit prior to the time the sponsor fled to seek protection in the UK, and are restricted to:
- A spouse
  - A civil partner
  - An unmarried / same sex partner providing that the parties have lived together in a relationship akin to either marriage or civil partnership for two years or more and the sponsor was granted asylum or humanitarian protection on or after 9 October 2006
  - A child, who is the child of the parent who is currently a refugee in the UK, is under the age of 18, who is not leading an independent life, is unmarried and is not in a civil partnership and has not formed an independent family unit
  - A child conceived before the sponsor fled to seek asylum in the UK but was born post-flight does not meet the requirements of rules 352D(iv) but should be treated as part of the pre-flight family of the sponsor.
- 4.3 Applicants must be sponsored from the UK. Eligible sponsors are:<sup>4</sup>
- an adult who has been recognised as a refugee under the 1951 Refugee Convention and who has not yet obtained British citizenship;
  - an adult who has been granted 5 years humanitarian protection (post 30 August 2005), but has not yet obtained British citizenship.<sup>5</sup>

<sup>3</sup> Family Reunion: SET10 guidance, published 2 August 2012. <https://www.gov.uk/government/publications/family-reunion-set10-see-also-post-flight-family-members-set18/family-reunion-set10-see-also-post-flight-family-members-set18>. Further guidance in relation to children is set out in SET07, published 14 November 2013. <https://www.gov.uk/government/publications/children-set07/children-set07>.

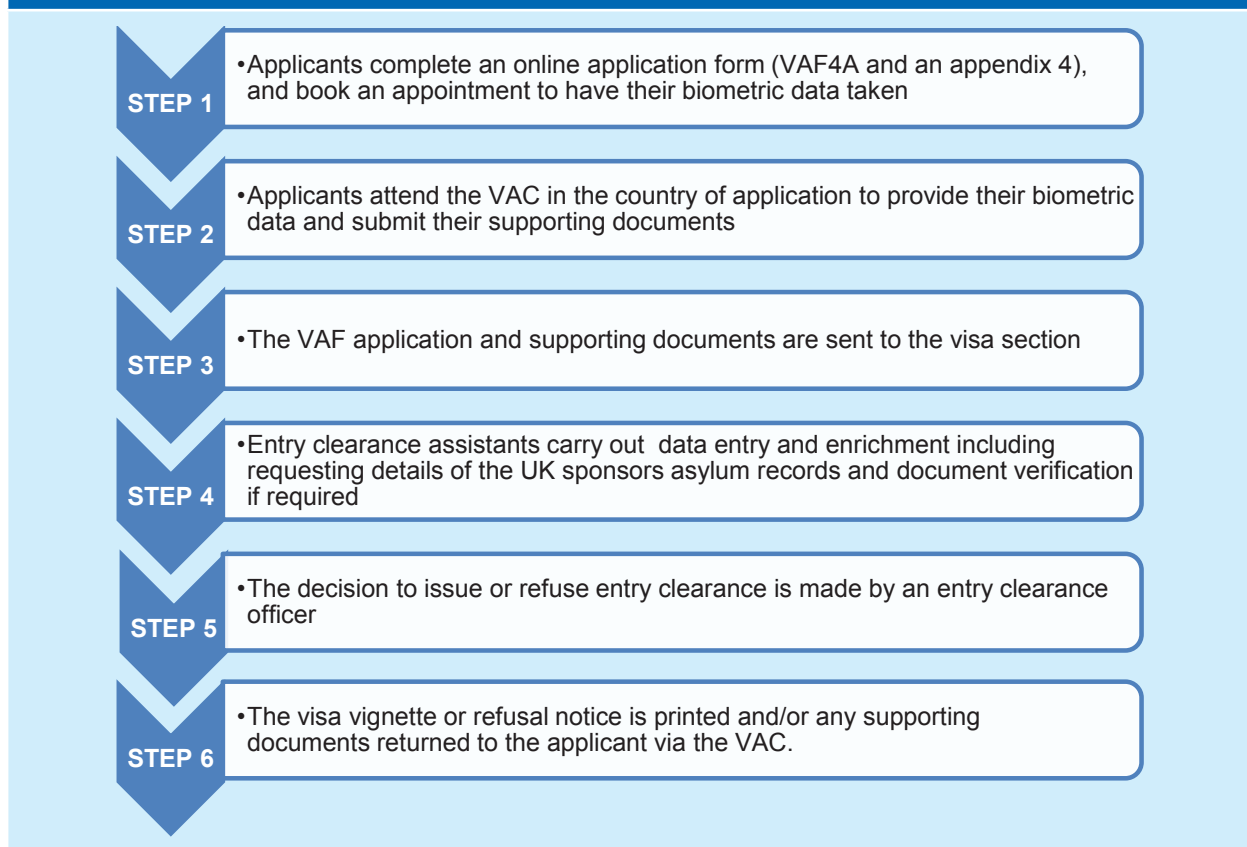
<sup>4</sup> As defined under paragraph 352-FJ, Immigration Rules.

<sup>5</sup> An individual who arrives in the UK as a family reunion applicant but is later granted refugee status or humanitarian protection and has not yet acquired British citizenship is also permitted to act as a sponsor.

Other dependant family members who are not eligible under the family reunion rules may be able to come to the UK under part 8 of the immigration rules.<sup>6</sup> In addition, Home Office guidance to staff indicates that family reunion applications can be considered outside of the Immigration Rules where there are ‘exceptional circumstances’ or ‘compassionate factors’.

- 4.4 Applications can be made from the UK (‘in-country’) or overseas. In-country family reunion applications are considered by caseworkers from UKVI’s Complex Casework Directorate. Applications made at overseas visa sections are considered by Entry Clearance Officers (ECOs). visa section staff are part of UKVI’s International Group.
- 4.5 Applicants who qualify for family reunion will be issued entry clearance and issued leave in line with their sponsor. However, this may not result in the applicant being issued the same status as their UK sponsor, as they may not be recognised as a refugee (or in need of humanitarian protection) in their own right.
- 4.6 Family reunion applicants are not required to pay a fee, nor is there any requirement on sponsors to meet any maintenance or accommodation requirements. The applications process is noted in Figure 1.

**Figure 1: Family reunion application process**



<sup>6</sup> Paragraphs 319L-319U. Part 8 of the Immigration Rules applies to family members who are applying to join a sponsor who has settled status in the UK. Applicants applying in this category will normally need to demonstrate maintenance and accommodation requirements. <https://www.gov.uk/guidance/immigration-rules/immigration-rules-part-8-family-members>.

## Volumes

- 4.7 Upon request the Home Office provided inspectors with data on application volumes and performance data. This showed that in 2015 (January to December) there were 47 applications for family reunion made in the UK and 8403 applications made overseas. In recent years, the number of overseas applications for family reunion has increased steadily. The number of asylum applications also rose during this period. See figure 2.

**Figure 2: Number of family reunion applications and asylum applications for the years 2012 to 2015**

Year	Family reunion applications <sup>7</sup>	Asylum claims <sup>8</sup>
2012	4917	21848
2013	5718	23584
2014	5498	25633
2015	8403	32414

Source: Home Office

## Methodology

### File sampling

- 4.8 The inspection focused on family reunion applications considered at the visa sections in Amman, Istanbul and Pretoria (see figure 3). These visa sections received the highest numbers of applications in 2015. The nationalities with the highest number of applications were selected for sampling, with a greater emphasis on refusals because of the impact on the applicants.
- 4.9 Overall, 181 applications decided between 1 July and 31 December 2015 were sampled. In addition, Kuwaiti Bidoon refusals from 1 January 2012 to 30 June 2015 were selected because of specific concerns raised by stakeholders about the treatment of Kuwaiti Bidoon applicants (see chapter 8).

**Figure 3: Number of Family Reunion applications in 2015 by nationality and number selected for file sampling**

Visa section	Highest numbers of applicants by nationality	Number of applications (2015)	File sample: applications refused entry clearance	File sample: applications issued entry clearance	Total by nationality	Total by visa section
Amman	Syrian	1488	23	10	33	43
	Unknown <sup>9</sup>	122	10	0	10	
Istanbul	Syrian <sup>10</sup>	1077	20	10	30	61
	Iranian	595	21	10	31	

<sup>7</sup> Home Office data.

<sup>8</sup> Published Home Office statistics <https://www.gov.uk/government/publications/immigration-statistics-october-to-december-2015/asylum#asylum-applications-and-initial-decisions-for-main-applicants>.

<sup>9</sup> The conflict in Syria has coincided with an increase in family reunion applications. Home Office data showed that 250 applications from Syrian nationals were made in 2012. In 2015, the number had increased to 2852 applications.

<sup>10</sup> The conflict in Syria has coincided with an increase in family reunion applications. Home Office data showed that 250 applications from Syrian nationals were made in 2012. In 2015, the number had increased to 2852 applications.

Pretoria	Eritrea	914	18	10	28	87
	Somalia	356	21	10	31	
	Sudan	854	18	10	28	

Source: Home Office

## Onsite

- 4.10 The onsite phase of the Inspection took place between 16 March and 7 April 2016, and included individual and group interviews with managers and staff directly involved in the consideration of family reunion applications in the visa sections in Amman, Istanbul and Pretoria, as well as with senior managers in the Home Office. A breakdown of the Home Office staff interviewed is shown at figure 4.

Figure 4: Breakdown of staff interviewed by grade	
Grade	Number of staff interviewed
Entry Clearance Assistant (ECA)	10
Entry Clearance Officer (ECO)	14
Entry Clearance Manager (ECM)	11
Immigration Liaison Assistant (ILA)	3
Immigration Liaison Officer (ILO)	3
Immigration Liaison Manager (ILM)	2
Operations manager	3
Regional director	3
Senior civil servant	1
<b>Total</b>	<b>50</b>

- 4.11 Inspectors spoke to Foreign Office staff in the visa sections in Istanbul and Pretoria. The inspection took oral and/or written evidence from stakeholders from the asylum and refugee sector<sup>11</sup> with an interest with the Home Office's handling of family reunion applications. Inspectors also interviewed one successful family reunion applicant, and four sponsors of family reunion applications, two who had sponsored successful applications and two whose applications were pending at the time of the interview (7 April 2016).

<sup>11</sup> Refugee Council, ILPA, Kuwaiti Association, Refugee Action, UNHCR, The British Red Cross, Asylum Aid and Duncan Lewis Solicitors.

## 5. The decision making process

### Supporting evidence

- 5.1 The SET10 guidance on the gov.uk website states that when dealing with a family reunion application an ECO:

*'...will need to be satisfied:*

- *that the sponsor has been recognised as a refugee in the UK and has not changed their status in the UK;*
- *the applicants are related as claimed to the sponsor as pre-flight family members;*
- *the spouse has met the sponsor;*
- *the marriage / civil partnership is subsisting.'*

The guidance also notes that *'Unmarried and same-sex partners are only eligible if their sponsor was recognised as a refugee on or after 9 October 2006.'*

- 5.2 The Home Office thus requires applicants to prove their identity and their relationship to the sponsor. Under 'Proof of relationship', SET10 states:

*'Applicants should include the following documents with their application to confirm they are related as claimed:*

- *Marriage certificate (original preferably or a copy)*
- *Wedding photos*
- *Birth certificate (original preferably or a copy)*
- *Original letter from UK Visas and Immigration confirming the sponsor's leave status in the UK*
- *Family photos (where possible).'*

- 5.3 The family reunion application form (VAF 4A)<sup>12</sup> advises applicants that the Home Office may make a decision based on the information contained within the application and that it is the applicant's responsibility to submit relevant documents to support their application. In addition, applicants are referred to the 'Guide to supporting documents'<sup>13</sup>, which is intended to assist applicants in deciding which supporting documents to submit with their VAF 4A. The guide does not specify documents that an applicant must submit, but provides suggestions. See figure 5.

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<sup>12</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/274029/VAF4A.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/274029/VAF4A.pdf). Updated December 2013.

<sup>13</sup> Guide to Supporting Documents, VER.09 09/12, [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/270197/sup-docs-settlement.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/270197/sup-docs-settlement.pdf)

### Figure 5: Extract from the 'guide to supporting documents'

Evidence of your relationship to your sponsor and any contact between you	<p>This could be a letter from your sponsor confirming your relationship and that they are supporting your application along with copies of:</p> <ul style="list-style-type: none"><li>• birth certificate or adoption certificate;</li><li>• marriage certificate or civil partnership certificate;</li><li>• death or divorce certificate;</li><li>• photographs of your wedding, civil partnership ceremony or other time spent together;</li><li>• phone records; and</li><li>• emails, letters or cards.</li></ul> <p>* You should not submit DVDs or video cassettes*</p>
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5.4 Staff and managers told inspectors that applications were considered taking into account all of the evidence provided by the applicant, which was assessed 'on the balance of probabilities'.<sup>14</sup>

5.5 Where ECOs judge that the evidence provided by the applicant is insufficient, the SET10 informs ECOs that:

*'the application may be deferred and further enquiries made to the Evidence and Enquiries Unit (see ECG on referrals). For example, enquiries with E+E may confirm that the relationship is as claimed if mentioned on the sponsor's SEF<sup>15</sup> application form.'*

### File sampling

5.6 File sampling revealed that some applicants had provided neither an official identity document nor other documentary evidence of the claimed relationship to their sponsor, such as marriage or birth certificates.

5.7 In 18 out of 21 refusal cases from Pretoria involving Somali nationals, the applicants had been refused either for failing to provide documents to verify their identity or for failing to provide evidence they were related as claimed to their sponsor. At the same visa section, identity documents or marriage certificates had not been provided in six out of 18 Eritrean refusals. Figure 6 is a case study involving a Somali national, which was typical of the cases sampled.

<sup>14</sup> ECOs are trained to consider visa applications (with the exception of applications made under the points based system) on the balance of probabilities; i.e. a decision is made on the basis that there is more evidence in favour of one outcome than another.

<sup>15</sup> Substantive asylum interview record with UK sponsor. More details are provided at paragraph 5.15.

## Figure 6: Case Study: Application from Somali applicant refused for failing to provide evidence of identity and proof of relationship

### The applicant:

- on 6 October 2015, applied with his dependent child to join his spouse in the UK, providing a copy of his sponsor's asylum interview record (the statement of evidence form, which named the applicant as a family member of the sponsor).

### The Home Office:

- on 22 November 2015, refused the family reunion application on the grounds that no evidence of the applicant's identity had been provided and the ECO was not satisfied the applicant was the same individual as that named on the SEF interview record. The refusal notice stated:

*'I have referred to Home Office records in the United Kingdom about your sponsor's application to remain in the United Kingdom in a permanent capacity. I note that your sponsor mentions your details in her application. However, taken alone, the statement made to the Home Office cannot be regarded as sufficient evidence of a marriage and could simply be a statement of future intent on the part of your sponsor. Furthermore you have provided inadequate evidence of your identity and nationality demonstrating you are one and the same person as mentioned.'*

- in addition, as no evidence had been submitted to show that the applicant was married to his UK sponsor:

*'Given the lack of satisfactory evidence of your marriage I am therefore not satisfied that you are married to your sponsor or that this marriage took place prior to your sponsor leaving Sudan to claim asylum in the UK.'*

- refused the dependent child in line with the applicant.

### Chief Inspector's comments

While the ECO was correct to refuse the application according to the guidance, there was a wider failure to recognise the practical difficulties Somali applicants faced in providing documentary evidence.

- 5.8 Stakeholders stressed that applicants from conflict areas or fragile states, such as Somalia and Eritrea, or those who are displaced and residing in a third country or in a refugee camp, may struggle to provide documentary evidence of identity or relationships. Some may feel unable to approach safely the authorities in their home country or place of residence for replacement documents. Equally, where these applicants did produce documents there may be no means of verifying them with the relevant authorities. For example, visa section managers and staff said they were unable to establish the validity of identity documents, such as birth certificates, provided by Somali,<sup>16</sup> Eritrean or Syrian applicants, or documentary evidence of claimed relationships, such as marriage certificates.
- 5.9 Home Office data<sup>17</sup> for applications decided in Pretoria in 2015 showed a correlation between missing or unverifiable documents and refusal rates. The refusal rate for Somali nationals was 80%, and for Eritreans was 49%, while for Sudanese applicants it was 32%. Staff and managers in

<sup>16</sup> The UK government does not recognise Somali issued passports.

<sup>17</sup> Home Office data for 01/01/2015 to 31/12/2015.

Pretoria said they were more confident about documents issued by the Sudanese authorities as contact with local authorities in Khartoum allowed for documents to be authenticated.

## (Non-)Contemporaneous documents

- 5.10 The same Home Office data showed that refusal rates for Syrian family reunion applications in Amman and Istanbul were markedly different. In 2015, the refusal rate in Amman was 27%, while in Istanbul it was 49%. File sampling revealed that Syrian applicants in Istanbul were more likely to provide supporting documentation that was ‘non-contemporaneous’, that is not the original document nor a copy produced at the time of the event (birth, marriage etc.) The visa section in Istanbul gave the applicant’s failure to provide contemporaneous documents as a reason to refuse in the majority of the sampled cases, while in Amman this reason was cited in far fewer cases. The two visa sections had not done any comparative analysis of their refusal rates, but managers agreed they could be linked to a difference in the quality of the documentation provided by applicants.
- 5.11 As noted, Home Office guidance states that birth and marriage certificates provided in support of an application should be ‘*original preferably or a copy*’. From the file sample, many of the Syrian applicants had submitted non-contemporaneous copies of documents which had been produced shortly before the family reunion application was made. Due to the continuing conflict in Syria, it was not possible to verify the authenticity of Syrian-issued documents with local authorities, and ECOs relied on their own experience and locally held knowledge on forgery detection when assessing these documents.
- 5.12 Managers and staff said that where applicants presented non-contemporaneous documents, and in particular where there was a lengthy gap between the recorded event and the issue of the document, it cast doubt on the authenticity of the document. While contemporaneous Syrian documents were equally unverifiable, if they had been issued before the current conflict began, ECOs felt able to place more reliance upon them.
- 5.13 Stakeholders pointed out that where applicants had had to flee their homes, particularly in areas of conflict, they may not have been in a position to gather up relevant contemporary documents or other evidence, e.g. photographs.
- 5.14 Figure 7 is an example of a Syrian applicant refused on the grounds that contemporaneous documents had not been provided. In his reapplication he provided DNA evidence and was successful. File sampling showed other examples where ECOs relied on DNA evidence or family photographs to issue entry clearance, despite the fact that other supporting documents were non-contemporaneous.

### Figure 7: Case Study: Application from Syrian applicant refused for failing to provide contemporaneous documents

#### The applicant:

- on 9 October 2015, accompanied by his mother and siblings, applied to join his father in the UK, and submitted a transcript of civil status record<sup>18</sup> which had been issued on 25 January 2015, several months after the sponsor had left Syria.

<sup>18</sup> Registration of applicant as being part of sponsor’s household.



### **The Home Office:**

- on 22 December 2015, dispatched the applicant's refusal notice, citing as one of the reasons for refusal as not providing contemporaneous documents to show he was related as claimed to his sponsor. The refusal notice stated:

*'As evidence of the relationship you have with your sponsor, you have submitted a number of translations and copies/original documents, including a transcript of civil status records. However I note that this document was issued on 25/01/2015 which I note is several months after your sponsor left Syria on 25/12/2014 to travel to the UK. You have not submitted any contemporaneous documents to show that you are related as claimed and no evidence your relationship is subsisting'.*

- on 17 February 2016, issued the applicant with entry clearance on reapplication following the production of DNA evidence which confirmed that he and his siblings were related as claimed to the sponsor.

### **Chief Inspector's comments**

File sampling identified [6 similar] cases where Syrian applicants in Istanbul were initially refused and later issued entry clearance on reapplication where the same supporting documents had been submitted but and where DNA evidence was also provided.

## **Asylum interview records**

- 5.15 Asylum claimants normally receive an initial screening interview, conducted on first encounter with the Home Office. This is followed by a longer 'substantive asylum interview', which is recorded on a Statement of Evidence Form (SEF). The substantive asylum interview will explore an individual's claim to asylum and their circumstances in the home country, and can also cover whether an applicant has any family and their whereabouts, which may already have been touched upon in the initial screening interview. The family reunion guidance refers specifically to the SEF. However, file sampling revealed that the record of the initial screening interview was also being used by ECOs to establish whether family reunion applicants had been identified as part of a sponsor's pre-flight family.
- 5.16 Home Office data indicated that 6,242 applications for family reunion were made to the visa sections in Amman, Istanbul and Pretoria in 2015. In the same period, these visa sections made 835 requests for the sponsor's SEF. Visa section staff said that in the majority of cases applicants themselves provided the SEF and/or screening interview record with their application. From the file sample, it was not always clear if the ECO had requested a copy of the SEF and/or record of the initial screening interview. However, the files did show that in 115 out of the 181<sup>19</sup> cases, one or both was available to the ECO when they were making their decision. Meanwhile, in 10 cases where it was clear that the applicant did not provide a copy of the sponsor's asylum interview records, the ECO made a decision without requesting these records.
- 5.17 Staff said that the SEF and/or screening interview record was not required for full consideration of every application. In some cases, there was sufficient information without these to accept the claimed relationship between an applicant and sponsor, and requesting the asylum interview records would simply delay the issue of entry clearance.

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<sup>19</sup> Excluding the 10 Kuwaiti Bidoon cases sampled.

## The evidential value of asylum interview records

- 5.18 It appeared from the file sample that where an ECO had a SEF and/or screening interview report to check, weight was given to the contents. However, ECOs did not regard them as sufficient on their own to decide the outcome of an application. This was because asylum interviewers did not always ask for family details, so the absence of such details an SEF and/or asylum screening interview report was not conclusive. visa section managers observed that asylum interviewers were from a different business area (asylum casework) and interviewers were not necessarily aware of the importance of the SEF to decision makers in other areas.
- 5.19 Based on file sampling and interviews with visa section staff, SEFs and/or screening interviews were not always provided by the evidence and enquiry team when requested, and in some cases the sponsor's 'asylum grant minute' was provided as an alternative.<sup>20</sup> In the sampled cases the latter was of little value to the ECO as it did not contain information to indicate whether the applicant was related to the sponsor as claimed or formed part of the sponsor's pre-flight family.

## SEF request practice

- 5.20 Once an SEF and/or screening interview record had been requested, the practice at the Visa Sections was to defer the family reunion application until these records were received. Staff reported that the average time taken for these documents to arrive was between two weeks to one month. The sampled files showed that SEFs had been requested in 43 out of 181 cases, although there may have been more requests that were not recorded. In 34 of the 43 cases, the case notes on Proviso caseworking system<sup>21</sup> indicated that the SEF had been received. The quickest took less than one calendar week and the longest took 16 weeks. In nine cases, there was either no note on Proviso indicating the SEF had been received, or other documents<sup>22</sup> relating to the sponsor's grant of asylum, which did not assist the ECO, were provided as an alternative. In these cases, the ECO waited between two weeks and 10 weeks (with an average of seven weeks) from requesting the SEF before proceeding to consider the application without it.
- 5.21 Staff at the visa sections said that the process of requesting a SEF was working better than it had done in the past. Requests were monitored and where necessary followed up. Staff in Istanbul reported that requests were monitored every 10 days, while in Pretoria cases were escalated to a manager if an SEF had not been received after 40 days. Reminders and repeat requests were common. Of the 43 cases where the record showed that a SEF had been requested, there were 11 where two or more reminders had been sent chasing up the original request.
- 5.22 Staff believed that responses to their requests were slow because the records were kept in Home Office paper files, which had to be located and retrieved from storage before sections of the SEF were copied and sent in hard copy to the Visa Section. Managers said that there had been discussions about finding digital solutions, so that ECOs could access the SEF directly, but the Visa Sections were not aware if these plans had progressed.

## Interviews of applicants and sponsors

- 5.23 Home Office guidance does not direct visa sections to interview overseas family reunion applicants, nor does it direct that their sponsors in the UK should be interviewed.<sup>23</sup>

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20 The asylum grant minute is an internal Home Office document setting out the basis of an individual's asylum claim and the reasoning behind the decision to grant asylum or humanitarian protection.

21 A database containing case records for entry clearance applications made overseas.

22 Such as Home Office records showing the rationale for the sponsor's grant of asylum, and which provided no family details.

23 For in country operations, a decision maker may arrange an interview with the sponsor and/or dependant if they are not satisfied with the evidence provided.

Views about the value of interviews varied amongst managers and staff. Some senior managers felt that, in some circumstances, interviews could be important in ensuring that genuine applicants were correctly issued with entry clearance.

- 5.24 The Amman visa section reported that it had conducted family reunion interviews in previous years, but these had not added any significant value to the decision making process. Of the 33 Syrian applications sampled from Amman, there was one case where an applicant and their sponsor had been interviewed. There were no interviews of applicants amongst the cases sampled from Istanbul and Pretoria.
- 5.25 Some managers and staff said that interviews did not take place because there was a shortage of staff within the visa sections with the requisite language skills and it was difficult to find suitably cleared interpreters. In Amman and Istanbul, staff considered there would be benefit in having Arabic and Kurdish speakers available to assist ECOs to clarify issues with applicants. In Pretoria, staff believed that it would be challenging to find interpreters, given the variety of languages and dialects spoken in the region.
- 5.26 Due to what the Istanbul visa section described as an ‘administrative error’, the sponsor had been interviewed in over half of the sampled Istanbul applications (33 out of 61). The mix-up had occurred because it was routine to interview sponsors for other types of family visa applications. The case records showed that in most of the 33 cases the interviewer had focused on factors that were relevant for these other types of family visa applications, but were not relevant to the applicant’s eligibility for family reunion, such as the sponsor’s financial circumstances. The visa section had identified and corrected this error prior to the inspection.

### Guidance on DNA evidence

- 5.27 Home Office guidance<sup>24</sup> states that when minor children apply for family reunion:

*‘the ECO must be satisfied that they are related as claimed and may need to request a DNA test.’*

- 5.28 The guidance informs applicants and decision makers that they have the option to offer DNA test evidence in support of their application.
- 5.29 The separate guidance on ‘Settlement Provisions for Children’<sup>25</sup> was updated during the course of the inspection. The version that we originally accessed had last been updated on 14 November 2013. The current version makes no reference to DNA testing.<sup>26</sup> The 2013 version, which applied to the applications sampled as part of this inspection, stated that DNA testing could be arranged through the Government-funded DNA scheme and could be used in family reunion cases;

*‘as a last resort when every other means of verifying the relationship has been exhausted; and where “related as claimed” would be the sole reason for refusal.’*

- 5.30 The Home Office had not commissioned DNA tests in any of the 181 cases sampled. Home Office data showed that the number of commissioned DNA tests reduced by a third between 2012/13 and 2013/14, despite increasing numbers of family reunion applications. Figure 8 shows the numbers and costs of DNA tests commissioned by the Home Office for family reunion cases for 2011/12 to 2014/15.

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<sup>24</sup> SET10 (7.11).

<sup>25</sup> SET07.

<sup>26</sup> Although the content of the guidance has changed, it is not clear when this was done as the version control has not been updated and retains its former date of 14 November 2013.

**Figure 8: Approximate volumes and costs of Home Office commissioned DNA tests**

Year (April to March)	Number of Home Office commissioned DNA tests	Cost
2011/12	2,380	£131,000
2012/13	2,890	£159,000
2013/14	1,890	£104,000
2014/15	1,780	£98,000

Source: Home Office

- 5.31 In June 2014, the Home Office terminated its DNA testing contract with Cellmark. An email from UKVI network operations to UKVI staff stated:

*'The majority of these tests have traditionally been used for family reunion cases, given the lack of reliable (or indeed any) documentation in these cases. But our position in these cases should be the same as for all other cases, and we should be consistent globally – the onus is on the applicant to demonstrate that they meet the requirements of the Rules, not for us to commission evidence to establish whether they do, or not. It is open to applicants to provide reliable evidence to demonstrate their relationship, and as part of this they can, of course, choose to provide DNA evidence at their own expense.'*

- 5.32 At the time, the guidance available to applicants did not refer to DNA evidence in the list of supporting documents, and it had not been updated to reflect this new approach. The Home Office explained that DNA evidence is not a requirement of the family reunion immigration rules and that it would be inappropriate to put applicants to the effort and expense of obtaining DNA evidence when this might not be needed to support their application.

### Value of DNA evidence

- 5.33 Staff reported that while ECOs did not require DNA evidence in every case to reach a balanced decision, and many applications were successful without DNA evidence, there were some instances where DNA evidence was critical. For example, prior to the cancellation of the contract with Cellmark the Home Office commissioned DNA tests for all Somali children because of the difficulty of verifying claimed family relationships for Somalis. This also applied to those Eritrean nationals who did not provide documents.
- 5.34 Applicants from all of the visa sections had provided DNA evidence in 10 of the 60 sampled cases where family reunion was issued. Most of these cases were issued not only based on the DNA evidence but also on the strength of the supporting documentation and corroborating information contained within asylum interview records. In one case, the ECO placed too much emphasis on the DNA evidence, and did not take sufficient account of the applicant not having provided evidence of being part of the sponsor's pre-flight family unit.
- 5.35 There were seven sampled cases from across the three visa sections where DNA evidence confirmed that the applicant was related as claimed to the sponsor, but where the application was refused. In four of these, the DNA evidence had not been relied upon because the ECO in question had:

- misread the DNA report with two cases;
- considered the limited evidence provided by the applicant to establish that they were part of a pre-flight family was more significant than the DNA evidence;<sup>27</sup> and
- placed greater weight on the applicant's failure to provide contemporaneous documents than on the DNA evidence.

5.36 Of 121 sampled refusal cases from Amman, Istanbul and Pretoria, there were 25 cases where the applicant was unable to acquire verifiable supporting documentation and a DNA test would have been the most efficient and effective way for them to prove their relationship with their sponsor. See figure 9.

### Figure 9: Case Study: Applicant with insufficient/unverifiable documentation where DNA evidence established 'related as claimed'

#### Initial application

##### The applicant:

- on 27 April 2015, a Somali minor, accompanied by two siblings, applied to join their mother in the UK. The applicant did not provide a passport or any other identity document and stated on their application form that he and his siblings resided with their grandmother in Somalia, and that the whereabouts of his father were unknown.

##### The Home Office:

- on 22 July 2015, refused the application (along with the siblings' applications), stating in the applicant's refusal letter that:
- while the applicant was noted in his sponsor's SEF interview record, this statement alone could not be regarded as sufficient evidence of a relationship or guardianship; and that
- the applicant had provided inadequate evidence of his identity and nationality and evidence to indicate he was the individual named on his mother's Home Office records.

#### Reapplication

##### The applicant:

- on 2 November 2015, the applicant and his siblings reapplied for family reunion. The applicant provided DNA evidence confirming that he was related as claimed to his sponsor.

##### The Home Office:

- on 5 January 2016, assessed the application and issued the applicant with entry clearance for family reunion. Proviso records noted '*...Previously refused as ECO not satisfied of relationship to sponsor. DNA evidence now received. TB cert valid.*<sup>28</sup> Issue'

<sup>27</sup> This application was issued following review by managers at the Istanbul Visa Section.

<sup>28</sup> Applicants who are resident in specific countries will need to be tested for Tuberculosis (TB) if they are coming to the UK for more than six months. A full list of the countries affected can be found at <https://www.gov.uk/tb-test-visa/overview>.

### Chief Inspector's comments

This case demonstrates the value of DNA evidence. On reapplying, the applicant did not submit any new documents except for the DNA evidence. The latter, considered alongside the details in the sponsor's SEF record, was correctly judged to be sufficient, despite the applicant being unable to provide any documentary evidence of the claimed relationship to the sponsor.

- 5.37 The refusal rates for family reunion applications from 2013 to 2015 for the nationalities sampled in this inspection are shown at figure 10. All show significant increases in refusal rates between 2013 and 2015, when DNA testing by the Home Office was no longer taking place.

**Figure 10: Refusal rates as a percentage for years 2013 to 2015<sup>30</sup>**

Nationality	2013	2015
Eritrean	15%	46%
Somali	17%	80%
Sudanese	9%	34%
Syrian	9%	35%
Iranian	9%	36%

Source: Home Office

- 5.38 The rise in refusal rates for Eritrean and Somali applicants between 2013 and 2015 coincided with the cessation of the Home Office commissioned DNA tests, which the Pretoria visa section had been using routinely for these nationalities.
- 5.39 In a small number of sampled cases applicants stated on their application forms that, should the ECO consider that they had not provided sufficient evidence of the claimed relationship to the sponsor, the applicant and sponsor would be prepared to undergo DNA testing to support their application. The Home Office did not respond to the applicants' offers to provide DNA evidence. Managers at the visa sections commented that in these cases: *'The ECO would not ordinarily defer an application for DNA evidence'*.
- 5.40 In eight of the sampled cases, the refusal notice included as a reason to refuse the applicant's failure to provide a voluntary DNA test. Staff and some managers considered this informed applicants about providing DNA tests with future applications, and in four of the eight cases the applicant provided DNA evidence with their reapplication. Figure 11 illustrates one such a case.

**Figure 11: Case Study: Applicant issued following initial refusal for not providing 'voluntary' DNA evidence**

### Initial application

#### The applicant:

- on 27 May 2015, a Syrian minor, with their mother and three siblings, applied to join their father in the UK, providing translated copies of family and individual civil records and the applicant's birth statement, all issued in 2015 and indicating that the applicant formed part of sponsor's family unit.

<sup>29</sup> Proviso records show that in the second application, the applicant was issued in his brother's identity. This appears to be an administrative error and does not alter the decision to issue.

<sup>30</sup> Home Office data 01/01/2013 to 31/12/2015.

### **The Home Office:**

- on 23 June 2015, received the applicants' application; and
- on 11 September 2015, refused the application (along with the applications from the other family members) as the documents provided were unverifiable. This decision was reviewed by an ECM before despatch on 13 September 2015. The refusal notice stated that:

*'The documentary evidence that you have submitted does not adequately evidence your relationship. The onus is upon you to satisfy me that you are related as claimed to your sponsor. You have not submitted evidence such as voluntary DNA testing by a UKVI approved provider that would allow me to be satisfied that your family unit is related as claimed to your sponsor and to each other.'*

### **Reapplication**

#### **The applicant:**

- on 20 October 2015, reapplied for Family Reunion with his family, providing the same documents as before, plus DNA evidence which confirmed the applicant was related as claimed to the mother and father.

#### **The Home Office:**

- on 1 December 2015, issued the applicant with entry clearance for Family Reunion.

#### **Chief Inspector's comments**

The initial refusal took the Home Office 58 days<sup>31</sup>, and in all it took 6 months for the applicant to be issued with family reunion. DNA evidence appeared to be the only additional form of evidence provided in the applicant's second application and it was this evidence that ultimately the ECO relied upon in their decision to issue an entry clearance. While the refusal notice gave an indication of what was required for a successful application, notifying the applicant at the refusal stage of the value of DNA evidence delayed the family reunion for three months. This could have been considerably reduced and the need to reapply avoided if the guidance available to applicants was clearer, so that applicants provide relevance evidence at the earliest possible stage.

- 5.41 There were a further 17 cases (21 in total out of 181) where applicants were issued entry clearance having reapplied with DNA evidence. In seven of these 21 cases, adult applicants' were issued on the strength of DNA evidence. In these cases DNA evidence established that a parent applicant and a UK sponsor were the genetic parents of a minor applicant.

## **Conclusions**

- 5.42 The consideration of family reunion applications is a 'paper-based' assessment, where the decision is reliant on the ECO being satisfied 'on the balance of probabilities' from the documentary evidence provided with the application and/or already on record with the Home Office, that the applicant is eligible and meets the relevant tests. The latter include proof of identity and proof that the relationship to the UK sponsor is as claimed.

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<sup>31</sup> The Home Office's service standard processing time starts when the Visa Section receives the application and ends on the date the decision is sent to the applicant. <https://www.gov.uk/government/organisations/uk-visas-and-immigration/about/about-our-services>. In this case, the service standard commenced on 23 June and ended on 13 September 2015.

- 5.43 Stakeholders in the refugee and asylum sector have highlighted that for some family reunion applicants, who may be fleeing areas of conflict or fragile states, or who are in refugee camps, it can be challenging to produce the documents listed in the Home Office guidance. Of the nationalities reviewed in this inspection, Somalis, Eritreans and Syrians appeared to face the greatest difficulties in providing documentary evidence. In the case of Syrian applicants, the inspection found some differences in the quality of the documents provided with applications made in Amman and in Istanbul. Applicants in Istanbul relied more heavily on providing non-contemporaneous documents, which ECOs considered offered little evidential value.
- 5.44 While the Home Office recognised that it was not always possible for applicants to provide the documents listed in its guidance, its position was that the onus rests with the applicant to demonstrate that they meet the requirements of the immigration rules. As a result, while there is the provision to defer applications while the applicant is given the opportunity to provide further evidence, this was not normal practice.
- 5.45 The inspection identified three ‘quick wins’ where the Home Office could improve the efficiency and effectiveness in dealing with family reunion applications, particularly where the applicant was struggling to provide the listed documentary evidence.
- 5.46 The first concerns use of its own records, specifically the asylum initial screening record and asylum Interview record for the UK sponsor. These records may contain details of the refugee’s family, such as names and dates of birth, which would corroborate information provided by the applicant. However, the inspection found a number of problems: and
- the details were not always captured during the asylum interviews as, according to staff at the visa sections visited, the staff conducting the asylum interviews were not aware of the potential importance of such information to other colleagues;
  - the records were retained as paper files, which had to be requested, located, photocopied and sent in hard copy to the visa section;
  - even when this process worked smoothly it took a matter of weeks for the records to arrive, but in some cases the ECO had to send reminders, often more than once, and based on file sampling a significant proportion of requests were never answered and the ECO proceeded without them (having delayed the decision to no purpose).
- 5.47 The second concerns the use of interviews. The family reunion process for overseas applications does not normally include the interviewing of applicants and/or sponsors. While some managers and staff at the visa sections visited saw the potential value of interviews, this view was not universally held. However, the argument is academic unless ECOs are given access to interpreters, and encouraged to use them to interview applicants to clarify areas of doubt.
- 5.48 The third, and most important area for improvement, is the use of DNA testing. In June 2014, the Home Office stopped funding DNA testing, looking to place the onus on the applicant and to bring family reunion applications into line with other application types. The effect has been to delay issuing entry clearance to applicants who qualify for family reunion. Prior to June 2014, ECOs were able to commission DNA tests and did so routinely for applications, including minors, that did not provide sufficient documentary evidence in support of the claimed relationship. Testing was often used with Somali and Eritrean nationals, for example. Since 2013, refusal rates for Somali and Eritrean applicants have doubled, and while other factors may have played a part, it is reasonable to assume that the change to DNA testing has been a major cause.



5.49 Regardless of the merits of the Home Office's arguments, financial and other, for stopping funded DNA testing, this was a communications failure. Although reference to DNA testing was removed from guidance for (settlement provisions) children, the Home Office had not updated published guidance for family reunion applicants, issued in August 2012 and still available on the gov.uk website, which informs applicants that it will commission DNA testing where a relationship as claimed has not been established. Meanwhile, the guide to supporting documents did not refer to DNA evidence. The Home Office's rationale for this omission was that the Immigration Rules do not require applicants to provide DNA evidence, which is at best unhelpful, as well as being inconsistent as these rules do not require other documents that are listed.

## Recommendations

### The Home Office should:

- In relation to the asylum screening and interview records, ensure that:
  - Asylum caseworkers are aware of the importance of capturing details of the claimant's family members; and,
  - overhaul the process for retrieving interview records, so that they are made available in good time to whoever needs them.
- Ensure that interviewing of family reunion applicants and/or sponsors is a practicable option for visa sections by improving access to interpreters, and review and provide guidance regarding the use of interviews to ensure best practice is consistently applied.
- Review its approach to DNA evidence in family reunion cases, including:
  - funding for commissioned DNA testing where the Home Office is unable to verify documents provided by the applicant;
  - deferral rather than refusal where the absence of DNA evidence is the only barrier to issuing entry clearance; and
  - update guidance so that it accurately reflects the approach and applicants are clear in what circumstances they should provide DNA testing results with their application.

## 6. Decision quality

### Applications refused entry clearance

- 6.1 The inspection sampled 121 family reunion refusals made between 1 July and 31 December 2015, comprising:
- 23 refusals from Amman (from Syrian nationals);
  - 41 refusals from Istanbul (from 20 Syrian and 21 Iranian nationals); and
  - 57 refusals from Pretoria (from 21 Somali, 18 Eritrean and 18 Sudanese nationals).
- 6.2 In each case, inspectors reviewed the application form, the evidence retained on the case file, the notes on the Proviso caseworking system, and the refusal notice, and assessed whether:
- the decision was 'correct', i.e. in line with the immigration rules and Home Office guidance, in particular that the ECO should consider all of the available evidence and make a decision 'on the balance of probabilities'; and
  - the refusal notice was 'adequate', i.e. it clearly set out the grounds for refusal.
- 6.3 Of the 121 refusal decisions, inspectors assessed that:
- 94 were 'correct';
  - 14 were 'incorrect'; and
  - in the remaining 13 cases, the records were not sufficient to demonstrate whether the decision was 'correct'.

### 'Incorrect' refusal decisions

- 6.4 Of the 14 cases where the decision to refuse was 'incorrect', four were from Pretoria, nine from Istanbul and one from Amman.

#### Pretoria

- 6.5 In two refusals from Pretoria, DNA evidence had been misinterpreted by the ECO. In both cases, the Visa Section overturned the refusal decisions after an appeal had been lodged. In one of these cases Entry Clearance Managers (ECMs) acknowledged the error made by the ECO and stated that they would provide feedback to the individual.
- 6.6 In the third Pretoria case, DNA evidence was disregarded by the ECO. The visa section maintained that the decision to refuse was 'correct' as the ECO had not refused on relationship grounds but due to lack of evidence that the applicant had formed part of the sponsor's pre-flight family unit. This case related to a minor applicant, applying with their siblings to join their mother (the sponsor) in the UK. They had been separated for a period of 2 years. An appeal was lodged against the refusal in January 2016, and remained outstanding at the time of the inspection.

6.7 Details of the fourth case from Pretoria are given in the case study at Figure 12.

### Figure 12: Case Study: 'Incorrect' refusal decision - Pretoria

#### The applicant:

- on 15 June 2015, at eight years of age, applied to join their father who had been granted refugee status in the UK (the applicant's mother was also resident in the UK and had been granted discretionary leave);<sup>32</sup>
- on 3 September 2015, was refused entry clearance as although the screening interview provided with the application corroborated the applicant's details and existence of the family unit pre-flight, the ECO was not satisfied the applicant was related as claimed to the sponsor, based on failure to provide evidence of:
  - their identity; and
  - contact with the UK sponsor.

#### Chief Inspector's comments

The ECO failed to consider written representations from the applicant's legal representatives. These explained that they were unable to approach the Eritrean or Ethiopian authorities to obtain identity documents for the applicant, who was an Eritrean national living in Sudan. In this case, the Home Office should have deferred the application and requested DNA evidence as the best way of resolving any doubts regarding identity. Furthermore, lack of contact was an unreasonable test for a minor separated from both parents, and there was no evidence that the ECO had considered potential safeguarding issues for this child, who was being looked after by different relatives.

#### The Home Office response:

*'The onus is on the applicant to satisfy the ECO that they meet the Immigration Rules...DNA evidence is not a requirement of the immigration rules, so it is not appropriate to defer applications to request that it is submitted...Safeguarding responsibilities under Section 55 are taken seriously and staff are trained on safeguarding children policies. Guidance is such that Section 55 obligations relate to children in the UK; however, there is a policy of considering any safeguarding children factors outside of [the] country also. This does not, however, result in us issuing an applicant when they do not meet the Immigration Rules in place. We would need to see that a child is in danger or in need of assistance to evoke the need to escalate the case.'*

#### Note

The Home Office maintained that the original decision to refuse was 'correct'. The applicant reapplied with DNA evidence in December 2015. This confirmed they were related as claimed to the sponsor and mother in the UK. However, they were again refused entry clearance due to concerns around the authenticity of their TB certificate.

<sup>32</sup> Leave to remain previously granted for a period of 3 years or less to individuals not considered for international protection, or excluded from it.

## Istanbul

- 6.8 In one case from Istanbul, DNA evidence was submitted on reapplication along with written representations aimed at addressing previous reasons for refusal. However, the ECO wrote: *'I am not satisfied that there have been any significant changes to your circumstances.'* The ECM withdrew the refusal decision prior to the file being sampled by inspectors, acknowledging that the DNA reports showed that the children included in a family application were related as claimed to both the parent applying and the sponsor. The ECM wrote: *'If I had reviewed at [the] time I would have been minded to accept the DNA evidence as giving greater weight, given the limited time elapsed since [sponsor] left Syria.'* The applicant and family were issued with entry clearance.
- 6.9 In four cases from Istanbul, minor applicants were refused entry clearance as they had failed to satisfy the ECO they were related as claimed to the UK sponsor. The refusal notices highlighted the applicants' failure to demonstrate contact with the UK sponsor post-flight, but evidence from the UK sponsors' asylum records had not been considered. The visa section acknowledged that reference to family in the sponsor's asylum interview record had not been considered in two of the four cases, and accepted that one decision was 'incorrect' (see figure 13), but maintained that the decision to refuse had been 'correct' in the other three cases on balance of probabilities.

### Figure 13: Case Study: 'Incorrect' refusal decision - Istanbul

#### The applicant:

- on 26 May 2015, applied with their mother and sibling to join their father who had been granted refugee status in the UK.

#### The Home Office:

- on 12 August 2015, refused entry clearance as the ECO was not satisfied that the relationship between the applicant and sponsor was as claimed, based on the lack of evidence of:
  - the family living with the sponsor as a family unit over the years; and
  - contact between the applicant and sponsor since the sponsor's arrival in the UK in December 2012.

#### Chief Inspector's comments

Home Office records showed the applicant and his family, including the UK sponsor, had applied for leave to remain in the UK in 2001. In 2007, following refusal of leave to remain and after exhausting all appeal rights, the Home Office assisted their return as a family to their country of origin. There was clear evidence of the family living together as a family unit while in the UK, which was not considered by the ECO. Contact between the minor and UK sponsor was also not a requirement under the immigration rules.

#### The Home Office response:

*'The SEF was requested on three occasions. This was partly received...We did not chase for the remaining pages which should have been done...Checks do not appear to have been undertaken which could also have assisted with the application...The ECO was referring more to the contact between the sponsor and the mother and this should be made clear. It would not be unreasonable to raise any concerns if there was limited or no contact whilst taking into account the sponsors circumstances.'*

## Note

While the Home Office accepted that the outcome was 'incorrect' it took no further action as the applicant had been issued entry clearance on reapplication.

- 6.10 In a further four cases from Istanbul, the ECO had either misinterpreted or failed to consider positive evidence submitted by the applicant which was material to the decision, for example evidence of contact via social media, money transfer receipts, or information available on Home Office records, for example the SEF and/or screening interview record. In one case, the Visa Section responded that: *'whilst the SEF would be taken into account the ECO would assess the application as a whole in determining the relationship between the applicant and the sponsor'*. The decision to refuse family reunion in all four of these cases was maintained as correct by managers at the visa section.

## Amman

- 6.11 Details of the remaining case study from Amman are given at figure 14.

### Figure 14: Case Study: 'Incorrect' refusal decision - Amman

#### The applicant:

- on 30 June 2015, applied to join their spouse who had been granted refugee status in the UK and provided a copy of the asylum interview record, a marriage certificate, statements and extracts from the civil register, money transfer receipts and copies of post flight contact; and
- on 29 September 2015, was refused entry clearance as the ECO was not satisfied based on the evidence provided that the applicant was married to the UK sponsor.

#### Chief Inspector's comments

The ECO failed to consider evidence from the asylum interview record which corroborated the applicant's claim to have formed a pre-flight family unit with the sponsor. Written representations from the legal representatives explained why the applicant could not provide photos of the wedding to demonstrate the pre-flight relationship; however, this was disregarded by the ECO.

#### The Home Office response:

*'The SEF information is one aspect of the application and is part of a holistic assessment when weighed with the positive and negative attributes of the whole application. Where a sponsor fails to mention his/her family, this is certainly a negative. When they do, then it has to be assessed as part of the overall consideration. SEFs are now routinely requested in all FR applications.'*

*'From the documents provided the ECO could not be satisfied, on the balance of probabilities, that the immigration rules were met.'*

## Note

The Home Office maintained that the decision to refuse was 'correct'.

## ‘Correct’ refusal decisions not in line with all available evidence

6.12 Of the 94 cases where inspectors found that the refusal decision was ‘correct’ in terms of the immigration rules and guidance:

- in 58 cases, the ‘correct’ decision was made in line with all available evidence;
- in a further nine cases, although relevant documentation had not been retained by the visa section, notes on the caseworking system and refusal notices showed the rationale for the ‘correct’ decision; and
- in 27 cases, while the refusal decision was ‘correct’ it was not made in line with all of the available evidence.

6.13 Of the 27 refusal cases where the decision was not made in line with all of the available evidence, the main reasons were that ECOs had:

- added evidence requirements that the applicant would not have been aware of at the time they made their application;
- failed to consider all of the available positive evidence that had either been submitted by the applicant in support of their application or could be found in the sponsor’s asylum records; and
- misinterpreted evidence to the applicant’s detriment.

## Additional evidence requirements

6.14 In two-thirds (18 of 27) of these refusal cases, ECOs had referred to the applicant’s failure to provide evidence that was not mentioned in published guidance<sup>33</sup>. See figure 15.

**Figure 15: Breakdown of cases where there were additional evidential requirements**

Visa Section	Nationality	Number of cases
Amman	Syrian	7
Istanbul	Syrian	1
	Iranian	6
Pretoria	Eritrean	1
	Somali	3
<b>Total</b>		<b>18</b>

6.15 There were examples from all three visa sections where the reasons for refusal included the failure of a minor applicant to demonstrate contact or a subsisting relationship with the sponsor. However, to be eligible for family reunion, a minor must meet only the following requirements of the immigration rules:<sup>34</sup>

- a child of a parent granted refugee status;
- under the age of 18; and
- not leading an independent life, married or in a civil partnership, or have formed an independent family unit.

<sup>33</sup> Guide to Supporting Documents, available on the gov.uk website.

<sup>34</sup> Paragraph 352D of the Immigration Rules, <https://www.gov.uk/guidance/immigration-rules/immigration-rules-part-11-asylum>.

- 6.16 Managers in Istanbul believed that in the cases where the ECO had cited failure to demonstrate contact or a subsisting relationship with the sponsor in their refusal notice, they were, *'mainly referring to the contact between the applicant's [parent] and the UK sponsor. It's agreed that this should have been made clear. In the context of contact, it's reasonable to raise this as the ECO would want to be satisfied the applicant was part of a family unit, although we accept the way this is communicated needs to be made clear and linked to the rules.'*
- 6.17 Managers in Pretoria said that while providing evidence of contact between a minor applicant and their UK sponsor was not a requirement under the immigration rules, *'ECOs do need to assess credibility, and this is often in the absence of evidence... It is believed that the ECO...is making an argument about a relationship, and whether they are satisfied that the relationship is as claimed. They are looking at a bigger picture and the scenario in the round.'*

### **Failure to consider positive evidence**

- 6.18 While not material to the 'correct' decision to refuse the application 'on the balance of probabilities', in 11 of the 27 refusal cases ECOs (at all three visa sections) had failed to consider all of the positive evidence submitted by the applicant in support of their application, and/or evidence available in the sponsor's asylum records. For example, the ECO had not considered or disregarded:
- evidence from the SEF, screening interview record and/or Home Office electronic records corroborating family details and/or relationships; or
  - evidence submitted confirming the applicant's identity or the relationship between the sponsor and applicant, such as marriage and/or birth certificates.

### **Misreading or misinterpretation of evidence**

- 6.19 In four out of 27 refusal decisions, the ECO had misread or misinterpreted evidence submitted by the applicant. In one case, the ECO had misread the date of birth of a minor applicant. The applicant was born after the sponsor had fled to the UK; however, the refusal letter stated: *'you have not provided a single photograph of you with your father; I would have expected to have seen photographs of you, your mother and your father as a family unit before your father fled Syria demonstrating you were a family unit.'* In the second case the ECO was not satisfied that the relationship between the applicant and spouse was as claimed due to inconsistencies around the dates of marriage; however, the claimed dates of marriage were post-flight, which was a ground for refusal not identified by the ECO. In the two remaining cases, the ECO misinterpreted the dates when the applicant and sponsor claimed they last saw each other/had contact.

### **Quality of refusal notices**

- 6.20 Guidance for ECOs in relation to refusal notices states:

*'Our Structure for refusal notices aims to clearly set out:*

- *How we make our decisions*
- *What information/evidence we have taken into consideration with that decision*
- *How we have reached the decision that the [Immigration] Rules are not met*
- *What parts of the [Immigration] Rules are not met*

*We use short paragraphs and direct links to the relevant paragraph of the [Immigration] Rules to make the decision easier for the customer to understand’.*<sup>35</sup>

- 6.21 Staff said that refusal notices needed to be clear, refer to the correct immigration rules and to positive evidence where requirements had been met, along with all reasons for refusal. By following this drafting style, staff believed the refusal notices would be defensible in the event of an appeal.
- 6.22 Out of the 121 sampled refusal decisions, 50 (41%) notices did not adequately communicate the grounds for refusal: 19 each from Pretoria and Istanbul, and 12 from Amman. The reasons for the lack of clarity included:
- the stock use of ‘officialese’ rather than the use of plain English, for example statements such as *‘I am initially conscious that documents of this kind are easily generated and readily available in...’*;
  - the inclusion of irrelevant information, which had no bearing on the evidence provided or the requirements of the immigration rules in relation to family reunion applications, for example information on currency conversion; and
  - copying and pasting from one refusal notice to another, for example copying the reasons from a parent’s refusal notice to a minor applicant’s rather than addressing the latter’s personal circumstances, which in one case had the effect of wrongly imposing additional evidence requirements on the minor applicant.
- 6.23 In 34 (28%) of the 121 refusal cases sampled, the ECO did not acknowledge where the applicant had met the requirements of the Immigration Rules or identify where they had failed to do so. This included 14 refusals from Istanbul, 13 from Pretoria, and seven from Amman.

### **Dealing with deception and fraud**

- 6.24 Paragraph 320 of the immigration rules sets out certain grounds for refusing entry clearance (and leave to enter), including where an applicant has attempted to use deception or fraudulent means to gain entry clearance by submitting a forged document, or making false representations on an application, or not disclosing material facts (paragraph 320(7A)).
- 6.25 Under paragraph 320(7B), where there has been a previous breach of immigration law or the use of deception in an entry clearance application, depending on the circumstances, any future entry clearance applications may be refused for a specified time of up to 10 years.
- 6.26 Staff in Amman and Istanbul said that paragraph 320(7A) of the immigration rules could be applied to family reunion cases, but that use of paragraph 320(7B) was inappropriate in such cases. Paragraph 320(7A) had been applied in two Syrian refusals in the Amman sample. In the first case, both the marriage and birth certificates submitted in support of the family reunion application were found not to be genuine, and in the second case the applicant had tampered with their genuine identity document by removing a visa.
- 6.27 Staff in Pretoria reported that they had sought advice from Home Office policy colleagues in December 2014 and had been informed that general grounds for refusal,<sup>36</sup> which include

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<sup>35</sup> <http://icinspector.independent.gov.uk/wp-content/uploads/2015/10/HO-response-to-Amman.pdf>

<sup>36</sup> <https://www.gov.uk/guidance/immigration-rules/immigration-rules-part-9-grounds-for-refusal>



paragraph 320 of the immigration rules, were not applicable to family reunion applications.<sup>37</sup> Four of the applications sampled from Pretoria were submitted with documents that were not genuine and therefore met the terms of paragraph 320(7A).

### Successful applications

6.28 The inspection sampled 60 successful family reunion applications, where entry clearance was issued between 1 July and 31 December 2015, comprising:

- 10 Syrian applications (from Amman);
- 10 Syrian and 10 Iranian applications (from Istanbul); and
- 10 Somali, 10 Eritrean, and 10 Sudanese applications (from Pretoria).

6.29 In each case, inspectors reviewed the application, the evidence retained on the case file and the notes on the Proviso caseworking system, and assessed whether:

- the decision was 'correct', having regard to the requirements of the Immigration Rules and the guidance available to both applicants and ECOs, and
- the grounds for issuing entry clearance were clearly set out.

6.30 This revealed that:

- in 48 of the 60 cases inspectors assessed the decision to issue entry clearance was 'correct';
- in two cases inspectors assessed the decision was 'incorrect'; and
- in the remaining ten cases, there was insufficient evidence retained or recorded to assess whether the decision was 'correct'.

### 'Incorrect' decisions

6.31 Both 'incorrect' decisions were from Pretoria. In the first case, the visa section agreed that while the decision was 'incorrect', the outcome was reasonable. In this case, the one year old applicant was conceived during the sponsor's visit to a refugee camp in a third country (to visit his spouse after he was granted asylum and refugee status in the UK post-flight) and therefore did not qualify for entry clearance under family reunion criteria. However, the applicant's mother and five siblings did qualify and were correctly issued entry clearance, so refusal would have resulted in the family being separated. These 'exceptional circumstances' and 'compassionate factors' were sufficient to warrant an issue of entry clearance outside of the Immigration Rules.

6.32 The second case is described at figure 16.

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<sup>37</sup> Email dated 18 December 2014.

## Figure 16: Case Study: 'Incorrect' decision to issue entry clearance - Pretoria

### The applicant:

- on 7 April 2015, a minor applied to join their father who had been granted refugee status in the UK.

### The Home Office:

- on 7 July 2015, issued the applicant entry clearance as the ECO was satisfied based on DNA evidence and confirmation of the applicant's details in the sponsor's asylum screening interview.

### Chief Inspector's comments

The applicant had not seen the sponsor since 2000. The applicant had lived with their mother and siblings until 2014, and written representations suggested that the applicant was now being looked after by a family friend in Sudan. While DNA evidence confirmed the relationship between the applicant and sponsor, corroborated by information in the sponsor's asylum records, there was little evidence that the applicant formed part of a family unit with the sponsor pre-flight, and no consideration was given to whether they were leading an independent life.

### The Home Office response:

*'As the child was born in 1999, it is more likely than not that the child was in the family unit pre-flight. The ECO was satisfied that the applicant was related to the sponsor as the child and was part of a pre-flight family. These are the only requirements under para 352D...We agree that the notes are not as comprehensive as they could be, but on balance the evidence has been provided to show that the applicant met the Rules, so the ECO made the right decision.'*

## 'Correct' decisions

6.33 Of the 48 'correct' decisions to issue entry clearance for family reunion reasons:

- in 34 cases, the decision was made in line with all available evidence;
- in one case, the decision was not made in line with all available evidence; and
- in 13 cases, while relevant supporting documents had not been retained by the visa section, the notes on the Proviso caseworking system provided a sufficient audit trail of the rationale for the decision to conclude that it was 'correct'.

## 'Correct' decision not in line with all available evidence

6.34 In the one case not in line with all the available evidence, the ECO had failed to notice inconsistencies in the evidence submitted by the applicant. In this case, the applicant was applying with step-children to join her husband, the UK sponsor. Detailed notes by the ECO referred to a significant amount of evidence submitted in support of the application, including photographs, marriage and birth certificates and the sponsor's divorce records, but not all of this was retained. The ECO failed to notice that the documents submitted showed the marriage with the applicant had taken place six months before the sponsor's divorce from his first wife. The visa section accepted that the applicant should not have been issued entry clearance as a spouse, but instead as an unmarried partner, *'as at the time of marriage the sponsor was married to his previous wife.'*

## Insufficient evidence retained or recorded

- 6.35 Home Office guidance to entry clearance staff states that: *'only copies of supporting documents directly relevant to the decision or addressed to the visa section should be retained on file. Where storage restrictions or Data Protection Act concerns preclude adherence to this policy, relevant documents should be referenced in issue notes or refusal notices.'*<sup>38</sup>
- 6.36 However, file sampling showed that supporting documents referred to in document checklists, Proviso notes and refusal notices had not been retained, nor had they been described in sufficient detail to enable an audit of the decision rationale.
- 6.37 In ten cases out of the 60 successful family reunion applications sampled, the ECO had failed to retain sufficient supporting documents and make a proper record of their decision on the Proviso caseworking system. As a result, it was not possible to say with certainty whether the decision was 'correct'. The same applied in 13 of the 121 refusal cases. The majority of these cases (12 out of 13) were from Pretoria. See figure 17.

### Figure 17: Case studies from Pretoria of insufficient supporting documents being retained and incomplete records on Proviso

#### Case Study 1: Successful application

##### The applicant:

- on 11 May 2015, applied with four siblings to join their sponsor in the UK whom they had last seen in 2008.

##### The Home Office:

- on 28 July 2015, issued the applicant with entry clearance.

##### Chief Inspector's comments

There were no documents retained on file and the notes on the Proviso caseworking system were limited to *'named on SEF, TB cert seen, DNA evidence seen. Issue'*. It was not clear from the notes what further evidence had been submitted with the application, or how the ECO had satisfied themselves that the applicant was part of the family unit after a seven year separation from the sponsor, and that the decision was reasonable *'on the balance of probabilities'*.

##### The Home Office response:

*'Given the weight of the SEF and DNA evidence, on balance this is the correct decision.'*

#### Case study 2: Refusal

##### The applicant:

- on 18 September 2015, applied to join their spouse who had been granted refugee status in the UK.

38 UKVI Operational Process Instruction 252, 'Guidance on retaining relevant supporting documents', dated February 2011.

#### **The Home Office:**

- on 2 November 2015, refused entry clearance as the ECO was not satisfied that the applicant and sponsor formed a family unit pre-flight or that the marriage/relationship was subsisting.

#### **Chief Inspector's comments**

The refusal letter acknowledged that the applicant had submitted a marriage document, wedding photographs and correspondence with the sponsor, but the only document retained on file was the SEF, which the ECO accepted had corroborated the applicant's details. The refusal notice did not describe fully the evidence submitted or its relevance to meeting/not meeting the requirements of the immigration rules. Having reapplied, on 25 February 2016, the applicant was issued entry clearance. The evidence described in the issue notes on the Proviso caseworking system appeared to be no different to that provided with the initial application and described in the refusal notice.

#### **Home Office response:**

*'Supporting documents that are pertinent to the ECO's decision that are usually retained were not retained in this case...The ECO was satisfied, based on evidence submitted with the fresh application (including call records), that the Immigration Rules were met.'*

- 6.38 Managers in Pretoria reported that: *'storage space in the visa section is very limited so few documents are retained. ECMs review decisions at the time they are made (according to the review to risk strategy) and so documents would be available at the time of review. We have reminded staff of the requirement to retain documents that are material to the decision.'*

#### **'Exceptional circumstances' and 'compassionate factors'**

- 6.39 Consideration of whether there are 'exceptional circumstances' or 'compassionate factors' in a family reunion application is a two-stage process. Guidance to ECOs states:

*'Where an entry clearance application does not meet the requirements of the Immigration Rules, the Entry Clearance Officer must consider whether there are exceptional circumstances or compassionate factors which mean the Home Office should consider granting entry clearance outside the Rules.'*

*Where the application does not meet the requirements of the rules for entry clearance, the Entry Clearance Officer must in every case consider whether there may be exceptional circumstances raised in the application which make refusal of entry clearance a breach of ECHR Article 8 (the right to respect for family life) because refusal would result in unjustifiably harsh consequences for the applicant or their family.*

*The Entry Clearance Officer must also consider whether the application raises any compassionate factors – that is compelling compassionate reasons – which might justify a grant of entry clearance outside the rules. Compassionate factors are, broadly speaking, exceptional circumstances, e.g. relating to serious ill health, which might mean that a refusal of entry clearance would result in unjustifiably harsh consequences for the applicant or their family but might not constitute a breach of Article 8.*

*Because Entry Clearance Officers cannot grant entry clearance outside the Rules, a case which the Entry Clearance Officer considers may meet the very high threshold of exceptional circumstances or compassionate factors must be referred to the Referred Casework Unit (RCU)...for consideration. Borderline cases should be referred.<sup>39</sup>*

6.40 Figure 18 shows the number of applications referred to RCU in 2014 and 2015 for approval of entry clearance outside of the immigration rules because of ‘exceptional circumstances’ or ‘compassionate factors’.

<b>Figure 18: Family reunion applications referred to RCU for 2014 and 2015.</b>		
	<b>2014</b>	<b>2015</b>
Number of applications where a recommendation for entry clearance to be issued outside of the immigration rules was approved by RCU.	13	32
Number of applications where recommendation for entry clearance to be issued outside of the immigration rules was refused by RCU.	7	5
<b>Total number of referrals</b>	<b>20</b>	<b>37</b>

Source: Home Office

6.41 The appendix FM partner and parent guidance<sup>40</sup> states that: ‘*where considering whether there are exceptional circumstances the decision maker should consider circumstances relating to all family members of the applicant where these are raised, including wider family members beyond their partner and child, or parent where the applicant is a child.*’

6.42 None of the sampled 181 cases had been referred to RCU. Staff said they were aware of the process for referring cases to RCU, and cited examples where they considered ‘exceptional circumstances’ might have applied, such as a family member being issued entry clearance under the immigration rules but where there was a sibling aged over 18, who would not qualify for leave under the rules.

6.43 Of the 181 cases, there were nine cases which inspectors judged might reasonably have been considered to involve ‘exceptional circumstances’ or ‘compassionate factors’ where a referral to RCU should have been considered:

- one case from Pretoria of a one year old child who was issued with family reunion when they did not qualify, but where refusal would have separated them from their mother and five siblings (paragraph 6.31 refers);
- two cases from Pretoria where families were separated: one where an applicant and her two step-children were issued entry clearance, but the applicant’s biological child from a previous marriage and two of the UK sponsor’s grandchildren, for whom the applicant was the carer, all under the age of 18, were refused as they were not the biological children of the sponsor;
- one refusal case from Pretoria involving five siblings who were separated: two who were over 18 years of age were refused as they did not meet family reunion criteria, while the three under 18 were issued entry clearance; and

<sup>39</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/452915/Appendix\\_FM\\_Section\\_1\\_Oa\\_5-year\\_Partner\\_and\\_Parent\\_Routes\\_August\\_2015.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/452915/Appendix_FM_Section_1_Oa_5-year_Partner_and_Parent_Routes_August_2015.pdf).

<sup>40</sup> *ibid.*

- five refusal cases from Amman: four in which the spouse (wife) was under the age of 18, and one where a mother was applying to join her adult daughter. One of these cases is highlighted at figure 19.

### Figure 19: Case study: Failure to consider 'exceptional circumstances' or 'compassionate factors'

#### The applicant:

- on 1 November 2015, having previously been refused based on paragraph 277 of the Immigration Rules, which requires both the applicant and the sponsor to be over the age of 18 on the date on which entry clearance is issued,<sup>41</sup> a minor aged 16 reapplied for family reunion with her two dependent children (aged 18 months and 8 months) to join her sponsor spouse who had been granted refugee status in the UK, submitting documents in support of the application which included:
  - marriage certificate;
  - photographs of the family with the older child;
  - UNHCR registration certificates;
  - DNA evidence confirming paternity and maternity;
  - extensive evidence of post flight contact; and
  - a copy of the sponsor's asylum interview records.

#### The Home Office:

- on 26 November 2015, refused the applicant and her dependents entry clearance as the ECO was not satisfied the applicant met the requirements of the immigration rules, in particular paragraph 277.

#### Chief Inspector's comments

The applicant noted in her family reunion reapplication form that her parents were due to return to Syria leaving her alone in Lebanon with the two children. However, there was no evidence that the ECO gave any consideration to whether this might constitute 'exceptional circumstances' or 'compassionate factors'.

#### The Home Office response:

*'The immigration rules are clear that the applicant is required to be over 18 at the time of application. In this respect the applicant did not qualify on age.'*

*Exceptional circumstances are considered on a case by case basis. If there are safeguarding issues then this will inevitably be referred, however, the experience of the ECO and ECM is crucial when determining when to use/apply exceptional circumstances. In this case the threshold was not considered to have been met.'*

*Each case is carefully assessed to see if there are any indicators of risk mentioned in the VAF or supporting documents that would identify the case as having safeguarding issues. None were identified in this application.'*

<sup>41</sup> <https://www.gov.uk/guidance/immigration-rules/immigration-rules-part-8-family-members>

6.44 Of the nine cases, the Home Office conceded that two, which involved minors being separated from their primary carers, should have been referred to RCU. However, it maintained that the ECO had correctly concluded that there were no exceptional or compelling reasons to warrant a referral to RCU in the other seven cases.

6.45 UKVI guidance on drafting refusal notices states:

*'In addition to explaining which Immigration Rules are not met and why, at entry clearance...every refusal notice or letter must explain why a grant of entry clearance or leave to remain outside the Rules on the basis of exceptional circumstances is not appropriate and contain appropriate appeal rights paragraphs.'*<sup>42</sup>

6.46 Most of the sampled 121 refusal notices contained a standard paragraph in relation to the consideration of Article 8 of the Human Rights Act and whether the issue of entry clearance or leave to remain outside the Rules on the basis of exceptional circumstances was appropriate. There was little evidence in the refusal notice or detailed in notes on the Proviso caseworking database that the ECO had considered concerns that were raised or were implicit. There was no evidence that the ECO had considered *'the likely impact on the applicant, their partner and/or child if the application was refused'*,<sup>43</sup> such as the safeguarding or welfare of vulnerable individuals as in the above examples.

## Assurance

6.47 Each overseas visa section operates a review to risk strategy targeting reviews toward issued applications considered to carry a higher risk, and which also mandates that certain categories of decision be automatically reviewed. The inspection examined the assurance mechanisms used to assure the quality of decision making in family reunion cases in Amman, Istanbul and Pretoria. The Home Office considers family reunion applications as 'low risk' overall, based on the low number of adverse outcomes, and this was taken into account when the visa sections produced their individual review to risk strategies.

6.48 In Pretoria and Amman, family reunion applications were included within the assurance targets for settlement<sup>44</sup> decisions. At both Visa Sections, ECMs aimed to review 20% of all issued and 20% of all refused settlement applications. Within these targets, in Pretoria, all Family Reunion applications from Eritrean, Somali and Sudanese applicants were mandatory referrals to an ECM where the ECO's decision was to issue entry clearance, as were successful Syrian applications in Istanbul. Under the Istanbul review to risk strategy, review by the ECM for all other family reunion decisions was optional. Despite this, in 24 out of 30 cases in our sample of applications that issued entry clearance in Pretoria, and in three out of ten Syrian issues in Istanbul, there was no evidence that the case had been reviewed by an ECM.

6.49 Figure 20 shows UKVI's management Information for the overall percentage of family reunion decisions reviewed by an ECM at the three visa sections for the 14 months to the end of February 2016.

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42 [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/452915/Appendix\\_FM\\_Section\\_1\\_Oa\\_5-year\\_Partner\\_and\\_Parent\\_Routes\\_August\\_2015.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/452915/Appendix_FM_Section_1_Oa_5-year_Partner_and_Parent_Routes_August_2015.pdf).

43 [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/452915/Appendix\\_FM\\_Section\\_1\\_Oa\\_5-year\\_Partner\\_and\\_Parent\\_Routes\\_August\\_2015.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/452915/Appendix_FM_Section_1_Oa_5-year_Partner_and_Parent_Routes_August_2015.pdf).

44 Applications to come to the UK on a permanent basis, most commonly as the spouse or other dependent of a British Citizen or a UK resident.

**Figure 20: Family reunion decisions reviewed by an ECM from 1 January 2015 to 29 February 2016**

Visa Section	% of issues reviewed by an ECM	% of refusals reviewed by an ECM
Amman	41%	64%
Istanbul	65%	25%
Pretoria	26%	17%

6.50 Of the sampled 121 refusals, the records indicated that 22 had been reviewed by an ECM, while of the 60 issues the figure was 23. Figure 21 provides a breakdown.

**Figure 21: Decisions reviewed by an ECM**

Visa Section	Nationality	Issues	Refusals
Amman	Syrian	1	10
Istanbul	Syrian	7	4
	Iranian	9	2
Pretoria	Eritrean	2	0
	Somali	2	2
	Sudanese	2	4
<b>Total</b>		<b>23</b>	<b>22</b>

6.51 In eight of the 45 cases reviewed by an ECM, the ECM failed to identify caseworking errors: one from Amman, two from Istanbul and five from Pretoria. This included the case referred to at 6.34. One of the refusal decisions assessed by inspectors as ‘incorrect’ was reviewed by an ECM after the case was selected for sampling, as a result of which the refusal was overturned and entry clearance issued.

6.52 Managers in Pretoria said they had had to increase the level of ECM reviews on successful applications due to the rise in adverse outcomes for some nationalities (applicants issued visit visas were claiming asylum once in the UK). They were trying to get the balance right between quality and quantity when it came to reviews and maintained that: ‘ECM reviews should be looking at the quality and whether the overall decision is correct...The Visa Section has had a lot of staff helping from the region, and...found it difficult to keep on top of quality of decisions.’ They acknowledged that the inspection had identified issues not picked up in the review process.

6.53 In Istanbul, managers said that they had not reviewed as many refusals as issues because ‘the mindset has been that they have a right of appeal’. Istanbul reviewed in advance all the refusal cases selected for sampling and identified four cases with errors, which they undertook to resolve. Managers accepted that the results of the file sampling had demonstrated the need to increase reviews of family reunion refusals.



## Conclusion

- 6.53 In the majority of family reunion cases sampled, the Home Office's decision to whether to issue entry clearance or refuse the application was 'correct' in terms of the immigration rules and Home Office guidance. However, the inspection identified some areas for improvement.
- 6.54 There were a number of cases where supporting evidence had been misread or misinterpreted, or where not all of the positive evidence had been considered when deciding to refuse. In other cases, failure to retain copies of relevant documents and inadequate record keeping, particularly in Pretoria, meant that it was difficult to assess whether decisions were correct, the more so because there were applications which appeared from the record to have provided similar supporting evidence, some of which succeeded and others which were refused.
- 6.55 This has been a recurring problem, which has been identified by inspectors on many previous occasions. Most recently, the 2015 inspection of family visitor visa applications recommended the retention of relevant supporting documents or notes that enabled a full audit of decisions. The Home Office accepted this recommendation, indicating that it was investigating an electronic solution. In the meantime, it needs to ensure practice is improved and is consistent across all visa sections.
- 6.56 In some sampled cases, minor applicants had been refused for failing to provide evidence of their contact post-flight with the UK sponsor. While this test is appropriate when assessing whether there is a subsisting relationship between the sponsor and an adult applicant (their spouse or partner), since it goes to their intention to continue family life in the UK, it is an incorrect test for minors, particularly younger children, and should not be relied upon as a reason for refusal.
- 6.57 ECOs had refused some applications because the applicant had not provided documentary evidence that was not specified in the guidance. Whether or not it amounts to procedural unfairness, this is clearly unreasonable. If deciding that the applicant needs to provide evidence that they could not have been expected to provide by following the guidance, rather than refuse, ECOs should defer the decision and give the applicant the opportunity to provide further evidence.
- 6.58 From the cases sampled, refusal notices largely met UKVI's decision quality standards, and generally showed an improvement from previous inspections. However, a significant number did not use plain English, used irrelevant or incorrect 'cut and paste' paragraphs from other notices, or failed to acknowledge positive evidence provided by the applicant and were therefore not balanced or helpful in terms of understanding why the application had been refused or what more evidence might be required to support any reapplication.
- 6.59 The three visa sections were inconsistent in the application of paragraph 320 of the immigration rules ('General grounds for refusal'). Amman and Istanbul were applying it, while Pretoria was not, apparently on instruction from London. One effect of not applying paragraph 320 was that family reunion applicants faced no sanctions if they made false representations or submitted forged documents.
- 6.60 The process for considering family reunion applications recognised that there might be 'exceptional circumstances' or 'compassionate factors' that called for an application to be considered outside the immigration rules. ECOs were required to refer such cases to the RCU. None of the cases sampled were referred, despite some appearing to merit consideration. In particular, the treatment of married women under the age of 18 appeared to take no account of

relevant compassionate factors. The inspection highlighted a particularly egregious case where the wife, aged 16, with two children, aged 18 and eight months (at the time of file sampling), was about to be left in Syria without family support. She was refused twice, without reference to the RCU, as the immigration rules require both the spouse applicant and UK sponsor to be aged 18 at the time of the application.

- 6.61 There was room to improve assurance of decision quality. Targets and expectations around ECM reviews varied between the three visa sections, reflecting the individual ‘review to risk’ strategies. This included different approaches to Syrian applicants in Amman and in Istanbul, which needs clearer justification. Based on file sampling, the visa sections were not meeting their own requirements for mandatory ECM reviews, and the reviews themselves were not always effective in spotting errors. More fundamentally, since the ‘review to risk’ concept is based on minimising immigration abuse, it is questionable whether it is sufficient in family reunion cases to ensure that individuals who qualify and are in need of protection receive the correct outcome, particularly as reviews were focused mostly on successful applications.

## Recommendations

### The Home Office should:

- In terms of decision making in family reunion cases:
  - ensure that ECOs give full consideration to all available evidence;
  - ensure that evidence relied upon in the decision is either retained or properly evidenced in the issue notes or refusal notice;
  - ensure that the case record and/or refusal notice fully explains the rationale for the decision; and
  - ensure that ECM reviews are effective.
- In relation to family reunion applications, review, issue clear guidance, and ensure consistent application by decision makers of:
  - ‘General grounds for refusal’ (paragraph 320 of the immigration rules might apply); and
  - ‘exceptional circumstances’ or ‘compassionate factors’, in particular (but not limited to) when considering applications from spouses under the age of 18.
- Reconsider whether assurance based on a ‘review to risk’ approach gives sufficient weight to the potential humanitarian protection consequences of family reunion refusals. In particular, ensure trends and issues associated with particular nationalities are identified and monitored.

## 7. Applications, appeals and reapplications

### The 'churn' effect

- 7.1 The inspection looked at the extent to which the 'churn' of applications, appeals and reapplications for family reunion was affecting efficiency and effectiveness at the visa sections in Amman, Istanbul and Pretoria, as well as impacting adversely on applicants and sponsors, and how this could be avoided or reduced.

### Timeliness of decisions: customer service standards

- 7.2 The gov.uk website states:

*'If you apply to come to or remain in the UK, we want you to know that if your application is straightforward (for example, we can make a decision on it without asking you for more information) it will be decided within our processing times (our customer service standards).'*

- 7.3 Overseas family reunion applications are included within UKVI's customer service standards for settlement applications. At the time of the inspection, UKVI stated that it would decide:

*'95% of settlement applications within 12 weeks of the application date and 100% within 24 weeks of the application date (where 1 week is 5 working days).'*<sup>45</sup>

- 7.4 It advised applicants:

*'If there is a problem with your application or if it is complex, we will write to explain why it will not be decided within the normal standard...The letter will explain what will happen next.'*

- 7.5 Managers from the three visa sections said that, while the published customer service standard was 60 working days, staff were actively working towards processing family reunion applications within 20 to 30 days.

- 7.6 Managers in Pretoria said that in May 2015 the visa section had received twice as many settlement applications as had been forecast; *'this explains why stats show applications from last year took longer to decide. It is difficult to predict these things.'* Figure 22 shows performance against the customer service standard in the 181 cases sampled.

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45 <https://www.gov.uk/government/organisations/uk-visas-and-immigration/about/about-our-services>.

**Figure 22: Performance against customer service standard for sampled cases (decisions made between 1 July to 31 December 2015)**

Visa Section	Decision within 60 days	Decision within 120 days
Amman	82%	100%
Istanbul	92%	100%
Pretoria	83%	100%

7.7 Of the 181 sampled cases, 155 were decided within 60 working days and the remaining 26 cases were decided within 120 working days. For those applications decided within 60 working days, the quickest took eight working days and the slowest 60 working days. The time taken for the other 26 applications ranged from 61 to 107 days.

7.8 According to Home Office guidance on overseas customer service standards, applications that cannot be decided within 60 working days should be recorded as 'complex':

*'...where it is likely that a decision cannot be made within service standards because of certain enrichment activities<sup>46</sup>...or referral, it must be recorded as 'complex' in Proviso. Complex cases should normally be decided within 120 working days...*

*An application must not be defined as non-straightforward and must not be marked as 'complex' when....the department has control over the delay - e.g...read-outs of Home Office files etc.'<sup>47</sup>*

7.9 In August 2015, managers in Istanbul reminded staff of the process for recording a case as 'complex': 'it has been confirmed that we are unable to complex cases where we are awaiting a Home Office report.' However, sampling showed that the Home Office guidance was not being followed consistently. Of the 26 cases sampled where the decision took longer than 60 days, seven were correctly recorded as 'complex'.

- two cases were recorded as 'complex' while investigating suspicions that documents were not genuine;
- one case was recorded as 'complex' while further enquiries were made with the appeals team regarding the determination from a previous appeal;
- one case was recorded as 'complex' awaiting a tuberculosis certificate that had had been requested; and
- in three issue cases, the applicants' passports had not been submitted with the applications and needed to be requested for vignettes<sup>48</sup> to be inserted.

7.10 Thirteen of the 26 cases were incorrectly deferred beyond 60 working days while waiting for the Home Office to provide the visa section with records relating to the sponsor's asylum interview records. Eleven of these were marked as complex.

<sup>46</sup> Additional checks conducted where there are concerns with: the information and/or supporting documents submitted; the genuineness of sponsorship; and the sponsor's immigration and criminal history.

<sup>47</sup> Operational Policy Instruction 593 – Complex Cases.

<sup>48</sup> An entry clearance certificate (which takes the form of a sticker) containing conditions of and validity of leave issued, which is placed in an applicant's passport or travel document.

- 7.11 In the remaining six cases it was unclear from the notes on the Proviso caseworking systems why they had been deferred and not resolved within the 60 working days service standard.
- 7.12 Figure 23 illustrates one of the cases wrongly recorded as ‘complex’ while the visa section waited to receive the UK sponsor’s asylum interview records.<sup>49</sup>

### Figure 23: Case study: Application recorded as ‘complex’ following delay in receiving SEF

#### The applicant:

- on 18 February 2015, a minor, accompanied by their father and five siblings, applied to join their sponsor mother in the UK.<sup>49</sup>

#### The Home Office:

- on 13 March 2015, received the application;
- on 16 March, requested details from the UK sponsor’s asylum records;
- on 21 May 2015, sent a second request for the asylum records;
- on 3 June 2015, recorded the application as ‘complex’ and notified the applicant via email stating: *‘the processing of your application has not been straightforward and we are unlikely to resolve your application within these customer service targets. Please be assured that we will continue to progress your application to enable a decision to be made as soon as possible.’*;
- on 07 July 2015, allocated the application to an ECO for a decision, having failed to receive the details from the sponsor’s asylum records; and
- on 9 July 2015, refused the application and sent the refusal notice.

#### Chief Inspector’s comments

After two failed attempts to obtain the sponsor’s asylum interview records, the visa section recorded the case as ‘complex’ on day 57 (excluding UK public and bank holidays). There were no notes on the Proviso caseworking system to indicate any external enrichment activities, or that the applicant was required to provide any additional evidence in support of their application. The use of ‘complex’ was not in accordance with Home Office guidance and this was poor customer service.

- 7.13 In 17 of the 26 cases that did not meet the 60 working day service standard, applicants were informed via email that their applications were *‘not straightforward’* and *‘unlikely to be resolved within the service standard’*. In the remaining nine cases, there was no evidence that applicants were informed of the delay.
- 7.14 Stakeholders from the refugee and asylum sector expressed concern that the Home Office did not appear to understand the impact a delay in making a decision about a family reunion application had on applicants. From the sampled 26 cases, there was no evidence that the applicants’ individual circumstances and the impact of a delay had been considered when deciding to defer the decision.

<sup>49</sup> Application submitted at the Visa Application Centre in Addis Ababa and considered in Pretoria.

## Appeals

- 7.15 Under section 82(1) of the Nationality, Immigration and Asylum Act 2002, applicants whose family reunion application is refused must be informed of their right to appeal against the refusal decision. Applicants are advised that:

*'If you decide to appeal against the refusal of this application, the decision will be reviewed with your grounds of appeal and the supporting documents you provide. You are strongly advised to complete all sections of the form and submit all relevant documents with your Notice of Appeal, as it may be possible to resolve the points at issue without an appeal hearing.'*

### Numbers of appeals and allowed appeal rates

- 7.16 Home Office data showed that the number of appeals from refused family reunion applicants was low. An analysis undertaken in Istanbul concluded: *'the lack of appeals from applicants in the Family Reunion category can be attributed to the cost of an appeal possibly preventing such applicants from appealing and is often a comment made by solicitors/representatives of such applicants.'*
- 7.17 Figure 24 shows the overall numbers of appeals against the refusal of family reunion applications and the outcomes of those appeals by year for 2013 to 2015.

**Figure 24: Appeals lodged and outcomes 2013-2015**

Year	Allowed/ Decisions overturned <sup>50</sup>	Dismissed	Withdrawn	Pending	Total
2013	1,082	315	148	245	<b>1790</b>
2014	504	307	108	203	<b>1122</b>
2015	48	41	13	271	<b>471</b>

- 7.18 Figures 25 and 26 show the number of appeals against family reunion refusals and outcomes for 2014 and 2015 for the nationalities sampled at the three visa sections.<sup>51</sup>

**Figure 25: Appeal rates and outcomes for 2014 by nationality**

Nationality	Allowed	Other <sup>52</sup>	Dismissed	Withdrawn	Pending	Total
Eritrean	42	15	15	0	6	78
Somali	33	8	56	1	5	103
Sudanese	13	9	15	1	1	39
Iranian	7	5	11	2	1	26
Syrian (Istanbul)	6	4	1	4	0	15
Syrian (Amman)	17	15	1	7	0	40

<sup>50</sup> Decisions overturned by the Global Appeals Team prior to hearing dates being set.

<sup>51</sup> Includes management information from Nairobi Visa Section, which was 'hubbed' into Pretoria in December 2014.

<sup>52</sup> Number of decisions overturned by the Global Appeals Team prior to appeal hearing dates being set.

**Figure 26: Appeal rates and outcomes for 2015 by nationality**

Nationality	Allowed	Other <sup>53</sup>	Dismissed	Withdrawn	Pending	Total
Eritrean	17	4	4	0	10	35
Somali	4	5	0	1	33	43
Sudanese	10	3	1	0	11	25
Iranian	7	1	4	0	9	21
Syrian (Istanbul)	9	9	0	1	8	27
Syrian (Amman)	12	9	5	2	9	37

- 7.19 In relation to allowed/overtaken appeals, managers in Istanbul told us that many refusal decisions were overturned on the basis of fresh evidence or DNA evidence being produced with the grounds of appeal. In addition, where appeals proceeded to a hearing, these were being withdrawn by Home Office presenting officers on the day, due to the strength of evidence provided by the appellant which they deemed would make the appeal unlikely to succeed.
- 7.20 Amman and Pretoria family reunion allowed/overtaken appeal rates had not been disaggregated from overall settlement appeal data. As a result, these visa sections were unaware of their allowed/overtaken rates for family reunion appeals.

### Processing times for appeals

- 7.21 Home Office data showed that for appeals lodged in 2014 against family reunion refusals, most appeals were resolved<sup>54</sup> (allowed, overturned or dismissed) within 200 working days or less. The shortest time was four working days and the longest 536 working days. Most appeals lodged in 2015<sup>55</sup> were resolved within 300 days or less, with the shortest time at one working day and the longest at 303 working days.
- 7.22 Stakeholders commented that some applicants were deterred from lodging appeals against refusal decisions because of the length of time it took for appeals to be processed. They believed that applicants found it quicker to reapply and have the application decided within the customer service standard of 60 working days than wait for an appeal hearing date to be set; *'there are clients waiting for at least a year for the appeal hearing date. It can be about 2 years from receiving a decision to getting before a judge...families are getting fed up of waiting in Amman, they have started going through Europe (not legal advice) to get to the UK or EU...'*
- 7.23 In their analysis of appeals in Istanbul, managers acknowledged that *'the reduction in appeals could, of course, be that Family Reunion applicants are able to reapply for a visa free of charge and this will likely be a quicker route of getting a decision.'*

### Reapplications

- 7.24 If a family reunion application is refused, the applicant has the option of reapplying and submitting further evidence and/or addressing the grounds for refusal set out in the refusal notice.

<sup>53</sup> Number of decisions overturned by the Global Appeals Team prior to hearing dates being set.

<sup>54</sup> Resolved as of 20 April 2016.

<sup>55</sup> Appeals resolved as of 20 April 2016.

- 7.25 Home Office data showed that in 2014 there were 53 reapplications for family reunion following an initial refusal, 49 of which were from Somali nationals. Of the 53, 44 were refused and two were issued entry clearance on reapplication. The remaining seven reapplications were withdrawn by the applicant prior to being resolved.
- 7.26 In 2015, the number of reapplications increased to 710. Of the 710 reapplications, 398 were refused and 142 were issued entry clearance, 15 had the outcomes of the reapplications revoked and 10 reapplications were deferred as complex. The remaining 65 were lapsed applications. The top five nationalities for reapplications are shown in figure 27.

**Figure 27: Number of Family Reunion reapplications in 2015 – top five nationalities**

Nationality	Number
Eritrean	272
Somali	222
Syrian	86
Iranian	43
Sudanese	24
Other <sup>56</sup>	63
<b>Total</b>	<b>710</b>

Source: Home Office

- 7.27 File sampling produced a much higher incidence of reapplications than suggested by the Home Office data. Out of 181 cases sampled, 68 were either reapplications or were initial refusals where the record showed that the applicant had subsequently reapplied and received an outcome by 30 March 2016. Of the 68 cases, 48 were issued entry clearance on reapplication and 20 were refused. The breakdown of successful reapplications is shown at figure 28.

**Figure 28: Breakdown of successful reapplications from the file sample**

Visa Section	Nationality	Number of cases
Amman	Syrian	7
Istanbul	Syrian	7
	Iranian	13
Pretoria	Eritrean	6
	Somali	4
	Sudanese	11
<b>Total</b>		<b>48</b>

- 7.28 Managers in Istanbul said that as applications for family reunion were free of charge, having to reapply was not a huge disadvantage for refused applicants. They did not consider that the time spent waiting for a new decision was significant.

<sup>56</sup> 15 Turkey, 11 Pakistan, 9 Afghanistan, 5 Gambia, 5 Uganda, 5 Ukraine, 3 China, 3 Senegal, 3 Sri Lanka, 2 Bangladesh and 2 Zimbabwe.



- 7.29 However, stakeholders said that any delays were potentially harmful, especially where families were in refugee camps, or had to apply or reapply in a country where they were not resident. One observed: *'sometimes they can get stuck and cannot get back to their refugee camps...There are safeguarding issues related to 'hanging' around in a country you are not a national of or lawfully resident. It can be months before a decision is made.'*
- 7.30 In 69 (36%) of the 181 applications sampled, the applicant had had to cross an international border to travel to the Visa Application Centre (VAC). Of these 69 cases, 28 were reapplications. These were mostly Syrian and Iranian nationals applying in Amman and Istanbul, and one Somali applicant who had travelled to the VAC in Kampala in order to submit their family reunion application.

## Conclusions

- 7.31 Most of the cases sampled received a decision within the published customer service standards of '95% of decisions within 60 working days', and the three visa sections said they were actively working towards considering applications within shorter internal targets of 20 to 30 days. None of the sampled cases exceeded the published maximum time of 120 working days. However, achievement of published targets for timeliness masked inefficiencies and poor practices, including recording cases as 'complex' and therefore outside the 60 day service standard when the delay was caused by other parts of the Home Office failing to respond promptly to queries and requests from ECOs, particularly in providing asylum Interview records. As well dealing with the root causes of these delays, there needs to be better policing of the use of 'complexing'.
- 7.32 Refusal of family reunion attracts a full right of appeal. Between 2014 and 2015 the number of appeals declined sharply. The likely reason is that reapplication, which is gratis, is much quicker (appeals were taking on average between nine and 11 months (186 and 222 working days) to be heard). Over the same period, there was a noticeable rise in allowed appeal and decision overturned rates. However, of the three visa sections inspected, only Istanbul had identified this and had done any analysis. This had shown that in the majority of cases where the appeal had been allowed, or where the Home Office had overturned the decision prior to the appeal hearing, it was because new evidence had been provided, particularly DNA evidence. Based on file sampling, this also held true for successful reapplications.
- 7.33 While 'correct' according to the immigration rules and guidance in most cases, the Home Office's current approach to family reunion applications is too often failing in practice to deliver the Home Office's ambition to get decisions 'right first time'. The re-working of reapplications and handling of appeals is at best inefficient, and it is in the Home Office's own interests to do more to ensure that applicants provide all necessary evidence, including DNA evidence, with their first application. Just as important, it is in the interests of applicants, some of whom will be living in difficult circumstances while awaiting a decision, not to have the process needlessly prolonged.

## Recommendations

### The Home Office should:

- Review its internal processes, in particular the 'hand offs' between different functions, to reduce the time taken to deal with family reunion applications.
- Ensure that family reunion applications are not wrongly recorded as 'complex' when delays are of the Home Office's making.
- Reduce the number of family reunion appeals and reapplications by ensuring that guidance to applicants clearly signposts what evidence they should provide with their application, and by getting the decision 'right first time'.

## 8. Kuwaiti Bidoons

### Background

- 8.1 Home Office Country Information and Guidance (CIG)<sup>57</sup> for Kuwait states that;

*‘Kuwait’s population in the 19<sup>th</sup> and into the 20<sup>th</sup> century consisted of settled citizens..... and Bedouin, or tribal nomads who lived in the surrounding territories, frequently crossing borders between the present-day Gulf states.’<sup>58</sup>*

- 8.2 A separate CIG for Kuwaiti Bidoons<sup>59</sup> states that:

*‘The Kuwaiti state regards the bidoon as illegal residents. Successive programmes of registration have regularised some by granting Kuwaiti nationality, but only very limited numbers per year, and the vast majority of nationality applications remain outstanding. The Kuwaiti government maintains that the majority of bidoon are nationals of other countries, therefore that they are not stateless. The history of the region means that some bidoon may have had origins in a neighbouring country, for example Iraqis, who came to work in oil production, but others will have had origins in Kuwait and failed or been unable to register their nationality.’*

- 8.3 The latter CIG also states that:

*‘Undocumented bidoon experience discrimination so severe that it amounts to persecution. Documented bidoon are not at real risk of persecution or breach of their protected human rights due to their ethnicity ... However, there are some circumstances where the state’s use of security flags or blocks may mean that a documented bidoon does not receive access to public and social ‘facilities’ in a manner that may amount to persecution.’<sup>60</sup>*

- 8.4 As the UK government does not recognise Kuwaiti Bidoons as a nationality, when a Bidoon makes an application for entry clearance the Home Office records the nationality as ‘unknown’ or ‘unspecified’. The *de facto* stateless position of Bidoons means they have difficulty in producing documents such as passports. In cases where the Home Office accepts a family reunion application, Bidoons are issued entry clearance on a Uniform Format Form (UFF).<sup>61</sup>

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<sup>57</sup> Country Information Guidance (CIG) is produced by the Home Office to assist UKVI to make decisions relating to asylum claims and human rights applications.

<sup>58</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/311943/Kuwait\\_country\\_information\\_guidance\\_2014.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/311943/Kuwait_country_information_guidance_2014.pdf).

<sup>59</sup> Also known as bedouin, bidoun , bidun

<sup>60</sup> <http://www.bailii.org/cgi-bin/markup.cgi?doc=/uk/cases/UKIAT/2006/00051.html&query=kuwait+bidoon&method=all - disp78#disp78>

<sup>61</sup> The Home Office issues entry clearances on a separate document to persons who either produce no identity document or identity documents which do not meet the UK Government’s standard on acceptable forms of identification.

## Applications at the Amman visa section

- 8.5 Between autumn 2012 and spring 2013, the Amman visa section received 785 family reunion applications from Kuwaiti Bidoons. In the same period, just 66 Kuwaiti Bidoon applications were received in Kuwait. A high proportion of the Amman applicants gave a Kuwait address as their permanent residence. At the time, the Home Office was unable to account for this, given that there were no restrictions preventing Kuwaiti Bidoons from making applications in Kuwait.
- 8.6 In light of this anomalous pattern of applications, between January and March 2013 Amman undertook an interview programme of applicants claiming to be Kuwaiti Bidoons. The visa section reported that most of those interviewed offered implausible accounts of their journey to Jordan and the majority appeared to know little or nothing of Kuwait.
- 8.7 In March 2014, information was received from the Jordanian Ministry of Interior indicating that some Kuwaiti Bidoon family reunion applicants, who had been issued UK entry clearance on a UFF as stateless individuals, had used an Iraqi identity to enter Jordan. This suggested to the Home Office a pattern of immigration abuse, and it launched an investigation of applications made by Kuwaiti Bidoons.
- 8.8 The Jordanian authorities formally requested the Amman visa section to refer all applicants who did not present a valid travel document with their family reunion application, to allow the applicants' details to be cross referenced with the details used when they entered Jordan. The Home Office said that none of the applicants that they had referred to the Jordanians presented themselves to the authorities, and as a result this arrangement between the Amman visa section and Jordanian Ministry was suspended.
- 8.9 In December 2014, the Amman Visa Section stopped accepting applications from Bidoons who were not living in Jordan, in line with Paragraph 28 of the immigration rules.<sup>62</sup> This resulted in a decrease in the number of applications submitted by 'unknown'<sup>63</sup> nationalities in Amman from 405 in 2014 to 112 in 2015.

## Delays

- 8.10 Stakeholders from the refugee and asylum sector, including the Kuwaiti Community Association<sup>64</sup> raised concerns about the Home Office's handling of family reunion applications from Kuwaiti Bidoons at the Amman visa section. They said that in many cases the Home Office did not accept the applicant's claim to be Bidoon, and that it had been responsible for lengthy delays in processing applications and in implementing appeal determinations.
- 8.11 The Home Office explained that 407 applications received in Amman up to December 2014 had been placed on hold while investigations into suspected immigration abuse by Kuwaiti Bidoons were ongoing.<sup>65</sup>

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62 '*...any other application must be made to the post in the country or territory where the applicant is living which has been designated by the Secretary of State to accept applications for entry clearance for that purpose and from that category of applicant. Where there is no such post the applicant must apply to the appropriate designated post outside the country or territory where he is living*'. <https://www.gov.uk/guidance/immigration-rules/immigration-rules-part-1-leave-to-enter-or-stay-in-the-uk>.

63 Not all 'Unknown' applicants are Bidoon applicants.

64 This organisation represent the interests of Kuwaiti Bidoons who live in the UK, providing practical and legal advice. The organisation campaigns for international recognition and protection of the rights of Kuwaiti Bidoon across the world.

65 This also included cases which had been refused and which had subsequently submitted an appeal. In some cases, while the appeal was ongoing the Home Office undertook verification checks and in others, cases were placed on hold following an appeal determination.

- 8.12 Home Office data showed that there had been no refusal decisions for Kuwaiti Bidoons since June 2015. File sampling therefore looked at five cases where a decision to refuse had been made in the first half of 2015, and five refusal cases where applications had either been raised in 2013 or 2014.
- 8.13 In all ten cases, the applicant was refused because verification checks concluded that the documents submitted were forged, which undermined the applicant's claim to be a Kuwaiti Bidoon. In nine of these cases, the evidence on record confirmed that this judgement was 'correct', but in the tenth case there was insufficient evidence to assess this fully.
- 8.14 For the applications raised in 2013 or 2014, all five were refused for failing to meet the requirements of the Immigration Rules. In all of these cases, the applicant submitted an appeal and produced DNA evidence. In 2016, all five applications were again refused, once the Home Office had verified that the applicant had submitted false documents with their original application.
- 8.15 In four of these five cases, the Home Office had earlier accepted that the DNA evidence was sufficient to confirm the applicant was related as claimed to the sponsor and had notified the first tier tribunal (immigration and asylum) that the original decision had been withdrawn. However, the applicants were not then issued entry clearance but were placed on hold for between 20 and 27 months while the suspected immigration abuse was investigated. The case study at figure 29 describes one of these cases.

### Figure 29: Case Study: Delays in progressing Kuwaiti Bidoon application following Home Office withdrawal of refusal decision

#### The applicant:

- on 10 April 2013, submitted an application for family reunion with her six children, seeking to join her spouse in the UK. The applicant submitted a marriage certificate issued in Kuwait with the application.

#### The Home Office:

- on 20 May 2013, refused family reunion because the ECO:
  - was not satisfied the applicant was Bidoon as claimed;
  - considered that the marriage certificate, which could not be verified, did not establish that the applicant was related as claimed to her UK sponsor; and
  - considered the delay of seven months between the sponsor being granted asylum and the applicant making an application undermined the credibility of the relationship with the sponsor.

#### The applicant:

- on 2 October 2013, submitted an appeal and provided DNA evidence for herself and the children, confirming that the latter were all related as claimed to their sponsor.

### **The Home Office:**

- on 17 March 2014, withdrew the decision and notified the first tier tribunal (immigration and asylum) of this;
- on 8 October 2015, placed the application on hold. Home Office records indicate '*This application has not been concluded and is currently on hold...*'; and
- on 10 April 2016, having conducted document verification checks on the applicant's marriage certificate and concluded the document was not genuine, refused the applicant under paragraph 320(7a) for providing non-genuine documents and under paragraph 352 for not meeting the requirements for family reunion.

### **Chief Inspector's comments**

There was a delay of over two years from when the Home Office notified the tribunal that it would no longer be defending the original refusal decision to when it concluded the case – by maintaining the refusal, albeit with further grounds. Home Office records do not show why there was a delay with completing verification checks or indicate whether the applicant was kept informed of the status of their case.

- 8.16 In the fifth case from 2013 - 2014, the applicant submitted an appeal, the Home Office did not withdraw the original decision, and the appeal was allowed by the Immigration Judge. However, the Home Office did not implement the Immigration judge's decision, but instead carried out verification checks of the applicant's supporting documents three months after the appeal determination. These showed that the documents were not genuine and the applicant was served with a second refusal decision.
- 8.17 In the five cases from the first half of 2015, verification checks were also carried out after the applicant had been refused. At the time of sampling, these cases were awaiting appeal hearing dates.
- 8.18 Home Office managers accepted that the processes for verifying suspect documents and issuing refusal decisions where fraud was established were too slow. They said the delay was caused in part by inefficient document retention practices. When applications were refused, copies of supporting documents were not always retained. This meant that applicants had to be contacted and asked to resubmit their supporting documents. This applied to one case in the 2015 sample.
- 8.19 The Home Office said that all the Bidoon applications that were on hold during the inspections had been resolved, with all applicants being advised about the position of their visa application.

### **Engagement with partners**

- 8.20 Home Office managers and staff said that investigations into Kuwaiti Bidoon applications had led to greater engagement with external stakeholders and better collaboration within the Home Office.
- 8.21 In Autumn 2014, the Home Office established a working group, comprising staff from Asylum Case-work and Policy, the Status Review Unit (SRU)<sup>66</sup>, Immigration Enforcement and RALON. Dialogue between these different business areas had identified sponsors who had employed deception in their asylum claims by claiming to be Kuwaiti Bidoons. The refugee status of 29 sponsors had been revoked. These sponsors had been linked to 100 family reunion applications in Amman.

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<sup>66</sup> Home Office unit which reviews the status of individuals with permanent grants of leave.

- 8.22 The Home Office also said that strong relationships had been developed with the Kuwaiti government in order to be able to verify documents presented by individuals who claimed to be Kuwaiti Bidoons. Staff reported that a significant number of cases were identified where the marriage certificates came from the same mosque in Kuwait, and were signed by the same four or five imams.<sup>67</sup> The Kuwaiti authorities approached these mosques and discovered that these Imams were not known to them and that the marriage certificates did not appear in their marriage registers. The Home Office also said that better liaison with the Kuwaiti government had enabled it to obtain samples of genuine birth certificates so that the visa section could carry out local verification of this type of document.
- 8.23 A data sharing agreement had been set up between the Amman visa section and the US embassy in Amman. The Home Office provided the embassy with details of 120 Bidoon sponsors in the UK who had been granted refugee status. In 11 cases, sponsors had previously applied for US visas in an Iraqi identity. The Home Office advised that the SRU was reviewing the refugee status of these individuals.

## Conclusions

- 8.24 Since 2013, there have been lengthy delays in the processing of family reunion applications from Kuwaiti Bidoons. The delays came about because the Home Office had been conducting a protracted investigation into suspected widespread immigration abuse by individuals who had applied at the Amman visa section claiming falsely to be Kuwaiti Bidoons. The investigation, which had involved the Jordanian and Kuwaiti authorities and the US Embassy in Amman, had cast serious doubt on whether the applicants were in fact Kuwaiti Bidoons, and these doubts, which had extended to some sponsors who had been granted asylum in the UK on that basis, were eventually confirmed.
- 8.25 Over the period, a number of cases had gone to appeal and had been allowed, while in other cases the Home Office had informed the first tier tribunal (immigration and asylum) that it had overturned the original refusal decision and therefore the appeal hearing was not needed. However, the Home Office did not issue entry clearance in these cases as directed, but continued its investigations and ultimately upheld the refusals. During this time, applicants were left in limbo, some for over two years, with no communication from the Home Office.
- 8.26 The investigation of fraud is an important function of the Home Office, although inevitably it results in delays in making decisions about applications. The delays affect all applicants, both non-genuine and genuine. It is particularly acute when the Tribunal has already allowed an appeal and the failure or refusal to act upon the Tribunal's decision may give the appearance of being contemptuous. It is therefore important for the Home Office to develop procedures, including adequate record keeping, so that fraud can be detected and established quickly, including where this involves responses from foreign sources who cannot be compelled to provide information to the Home Office's deadlines.
- 8.27 In this instance, the inspection did not look in detail at the investigation, so it is difficult to say whether it could have moved more quickly. However, because the visa section had not followed guidance in relation to the retention of supporting documents, applicants had to be asked to resubmit their documents (so that they could be examined for evidence of fraud) and this will have added to the time taken.

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<sup>67</sup> A religious leader in the Islamic faith.

8.28 Whether a delay in acting upon a tribunal's decision is reasonable or not can be determined only on a case-by-case basis. The tribunal that has made the decision has no longer any residual function and, the Inspectorate understands, no general enforcement powers. It is left to the individual to pursue the Home Office, at first in correspondence and then, if necessary, by way of judicial review.

## Recommendation

### The Home Office should:

- In relation to those Kuwaiti Bidoon family reunion applications from 2013 to 2015 where the Home Office has not implemented the Judges' ruling or its own undertakings to issue entry clearance, ensure that it responds quickly when reasons for the delay are sought by those affected and that it provides as much information as it reasonably can, bearing in mind the sensitive nature of the investigation.



# Appendix 1: role and remit of the Chief Inspector

The role of the Independent Chief Inspector ('the Chief Inspector') of the UK Border Agency (the Agency) was established by the UK Borders Act 2007 to examine and report on the efficiency and effectiveness of the Agency. In 2009, the Independent Chief Inspector's remit was extended to include customs functions and contractors.

On 26 April 2009, the Independent Chief Inspector was also appointed to the statutory role of Independent Monitor for Entry Clearance Refusals without the Right of Appeal as set out in section 23 of the Immigration and Asylum Act 1999, as amended by section 4(2) of the Immigration, Asylum and Nationality Act 2006.

On 20 February 2012, the Home Secretary announced that Border Force would be taken out of the Agency to become a separate operational command within the Home Office. The Home Secretary confirmed this change would not affect the Chief Inspector's statutory responsibilities and that he would continue to be responsible for inspecting the operations of both the Agency and the Border Force.

On 22 March 2012, the Chief Inspector of the UK Border Agency's title changed to become the Independent Chief Inspector of Borders and Immigration. His statutory responsibilities remained the same. The Chief Inspector is independent of the Home Office and reports directly to the Home Secretary.

On 26 March 2013, the Home Secretary announced that the UK Border Agency was to be broken up and brought back into the Home Office, reporting directly to Ministers, under a new package of reforms. The Independent Chief Inspector will continue to inspect the UK's border and immigration functions, as well as contractors employed by the Home Office to deliver any of these functions. Under the new arrangements, UK Visas and Immigration (UKVI) and Immigration Enforcement (IE) became operational commands under the direction of Directors General.

## Appendix 2: Inspection criteria

### Figure 30: Inspection criteria

#### Operational delivery

12. Decisions on the entry, stay and removal of individuals should be taken in accordance with the law and the principles of good administration.
13. Customs and immigration offences should be prevented, detected, investigated and where appropriate, prosecuted.
14. Resources should be allocated to support operational delivery and achieve value for money.

#### Safeguarding individuals

15. All individuals should be treated with dignity and respect and without discrimination in accordance with the law.
16. All border and immigration functions should be carried out with regard to the need to safeguard and promote the welfare of children.
17. Personal data of individuals should be treated and stored securely in accordance with the relevant legislation and regulations.

#### Continuous improvement

18. The implementation of policies and processes should support the efficient and effective delivery of border and immigration functions.
19. Risks to operational delivery should be identified, monitored and mitigated.

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The inspection took evidence from Refugee Council; Immigration Law Practitioners' Association (ILPA); Kuwaiti Association; Refugee Action; UNHCR; the British Red Cross; Asylum Aid; Duncan Lewis Solicitors.









