



Home Office

ECAA business guidance

Version 8.0

This guidance is based on the business provisions of the 1973 Immigration Rules

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About this guidance

This guidance tells you about what you must do when deciding applications from self-employed Turkish businesspersons who wish to apply for an extension of stay in the UK to self-establish in business or continue operating their business under the Turkish European Communities Association Agreement (ECAA).

Contacts

If you have any questions about the guidance and your line manager or senior caseworker cannot help you or you think that the guidance has factual errors then email the Free Movement Migrant Criminality Unit.

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

Publication

Below is information on when this version of the guidance was published:

- version **8.0**
- published for Home Office staff on **18 July 2019**

Changes from last version of this guidance

Clarification on the key facts page on settlement.

Related content

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Safeguard and promote child welfare

Turkish ECAA business persons: key facts

This page tells you about the key facts for business applications under the Turkish ECAA.

Issue	Answer
Eligibility requirements	<p>The applicant must be a Turkish national who:</p> <ul style="list-style-type: none"> • has obtained entry clearance for the purpose of establishing themselves in business in the UK • has leave to remain in another category and wishes to switch into the ECAA category with the intention to self-establish in business • is already in this category and wishes to apply for an extension of stay to continue operating their business under the 1973 business provisions
Application forms	Extension of stay – ECAA2 Turkish Businessperson
Cost of application:	No fee
Entry clearance mandatory?	No
Is biometric information required for applications made in the UK?	Yes
Code of leave to remain granted	Code 2
Entry clearance endorsements	Not applicable
Conditions of leave to remain	<p>Limited leave to remain in the UK No recourse to public funds Able to work as authorised by the Secretary of State Register at once with the police or report extension to the police</p>
How long is leave to remain normally granted for?	<ul style="list-style-type: none"> • applicants who have already entered the UK lawfully in other categories with a genuine intention to self-establish in business must be granted 12 months' leave to remain from the date of the decision • after completing one year of self-employment applicants must normally be granted 3 years' further leave to remain if the provisions are met - where the ongoing success of the business is still to be proven a further 12 months' leave may be granted rather than the full 3 years • further periods of 3 years' leave can continue to

Issue	Answer
	be granted where the ECAA requirements continue to be met
Are dependants allowed?	Yes – partner and/or children under 18 if they are applying as dependants. A partner means spouse, civil partner, unmarried or same-sex partner
Work and study allowed?	Paid employment is prohibited
Is switching into this category allowed?	Yes. Turkish nationals who are in the UK lawfully under any other immigration category and can meet the 1973 business requirements are entitled to have leave granted under the Turkish ECAA
Does this category lead to settlement (indefinite leave to remain)?	Yes, if eligible via Appendix ECAA rules
CID case type	Business under EC Association Agreement – Switching, LTR
Immigration Rules paragraphs	Paragraphs 4 and 21 of HC510, the business rules in force in 1973

Related content

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Background

This page tells you about the background to the Turkish ECAA.

The ECAA was set up under the Ankara Agreement on 12 September 1963 with the general aim of promoting economic relations between Turkey and the community and the eventual accession of Turkey to the community. Articles 13 and 14 of that agreement refer to a process for abolishing the restrictions on the freedom of establishment and the freedom to provide services between the contracting parties.

These provisions were further developed in article 41(1) of the Additional Protocol to the Turkish ECAA which was signed on 23 November 1970.

Article 41(1) of the Additional Protocol states that ‘the Contracting Parties shall refrain from introducing between themselves any new restrictions on the freedom of establishment and the freedom to provide services.’

This provision is commonly known as a ‘standstill clause’. It prohibits the introduction of new national restrictions which are less favourable than before the time when the Additional Protocol came into force.

The UK became bound by the ECAA and the Additional Protocol when it joined the European Economic Community (EEC) in 1973.

In respect of Turkish nationals seeking to enter or reside in the UK to establish themselves in business or provide a service, the UK must apply the domestic business provisions as they were within the Immigration Rules in force in 1973. These are HC509 (on entry rules) and HC510 (after entry rules).

The Immigration Rules as they were in 1973 are far less stringent than the corresponding requirements in the current rules and must be applied in the context of the objectives of ECAA.

This guidance only applies to Turkish nationals who wish to set up in business in the UK. Applications made under the worker provisions of the Turkish ECAA are considered separately in accordance with different requirements.

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Relevant Immigration Rules

This page tells you about the Immigration Rules that apply to Turkish ECAA business cases.

Under the Turkish ECAA business provisions most cases are considered under the Immigration Rules as they were in 1973, rather than the current Rules. For on entry cases this means consideration under HC509. After entry cases are dealt with under HC510.

You will need to ensure that you consider the ECAA application under the appropriate Rules.

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[Relevant Immigration Rules: on entry requirements](#)

[Relevant Immigration Rules: after entry requirements](#)

[Dependent partners](#)

Relevant Immigration Rules: on entry requirements

This page tells you about the Immigration Rules that apply to passengers seeking entry clearance to come and establish in business in the UK as a Turkish ECAA businessperson.

Paragraph 12 of HC509

'Visas, entry certificates and Home Office letters of consent (described in the Act by the generic term 'entry clearance') are issued in accordance with the rules contained in this statement. A passenger who holds an entry clearance which was duly issued to him and is still current is not to be refused leave to enter unless the Immigration Officer is satisfied that:

- false representations were employed or material facts were concealed, whether or not to the holder's knowledge for the purpose of obtaining the clearance, or
- a change in circumstances since it was issued has removed the basis of the holder's claim to admission'

But an Immigration Officer is not precluded from refusing leave to enter on grounds of restricted returnability, on medical grounds, on grounds of criminal record, because the passenger is the subject of a deportation order or because exclusion would be conducive to the public good. The scope of the power to refuse leave to enter on these grounds is set out in paragraphs 14 and 65-69.'

Paragraph 29 of HC509

'Businessmen admitted to the UK as visitors are free to transact business during their visit.'

Paragraph 30 of HC509

'Passengers who have obtained entry clearances for the purposes of establishing themselves in the UK in business, whether a new or existing business, should be admitted for a period not exceeding 12 months with a condition restricting their freedom to take employment. Passengers who are unable to present such a clearance but nevertheless seem likely to be able to satisfy the requirements of one of the next two paragraphs should be admitted for a period of not more than two months, with a prohibition on employment, and advised to present their case to the Home Office.'

Paragraph 31 of HC509

‘For an applicant to obtain an entry clearance for this purpose he will need to show, if joining an established business, that he will be bringing money of his own to put into the business; that he will be able to bear his share of the liabilities; that his share of the profits will be sufficient to support him and his dependants; that he will be actively concerned in the running of the business; and that there is a genuine need for his services and investment. The accounts of the business for previous years will require to be produced, in order to establish the precise financial position. An entry clearance will not be issued where it appears that the proposed partnership or directorship amounts to disguised employment or where it seems likely that, to obtain a livelihood, the applicant will have to supplement his business activities by employment for which a work permit is required.’

Paragraph 32 of HC509

‘If the applicant wishes to establish in business in the UK on his own account, he will need to show that he will be bringing into the country sufficient funds to establish a business that can realistically be expected to support him and any dependants without recourse to employment for which a work permit is required.’

Paragraph 35 of HC509

‘The wife and children under 18 of a person admitted to the UK as a self-employed person should be given leave to enter for the period of his authorised stay. Their freedom to take employment should not be restricted.’

Paragraph 65 of HC509

‘Where the Medical Inspector advises that for medical reasons it is undesirable to admit the passenger the Immigration Officer should refuse leave to enter unless he considers admission warranted by strong compassionate reasons. He may also refuse leave to enter where the passenger declines to submit to a medical examination. And where the Medical Inspector advises that a passenger is suffering from a specified disease or condition which may interfere with his ability to support himself or his dependants, the Immigration Officer should take account of this, in conjunction with other factors, in deciding whether to admit the passenger.’

Paragraph 68 of HC509

‘Any passenger who is currently subject to a deportation order is to be refused leave to enter. If he wishes to make representations, he should be advised that on return to his own country it will be open to him to apply for revocation of the order, and where appropriate, that he will have a right of appeal if revocation is refused.’

Paragraph 69 of HC509

‘Any passenger except the wife or child under 18 of a person present and settled in the UK may be refused leave to enter on the ground that his exclusion is conducive to the public good, where the Secretary of State has personally so directed, or from

information available to the Immigration Officer it seems right to refuse leave to enter on that ground if, for example, in the light of the passenger's character, conduct or associations it is undesirable to give him leave to enter.'

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[Eligibility for entry clearance](#)

[Eligibility for leave to enter](#)

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Relevant Immigration Rules: after entry requirements

This page tells you about the Immigration Rules that apply to Turkish nationals admitted as visitors for leave to remain to establish in business, or continue running their business whether on their own account or as partners in a new or existing business in the UK.

As a matter of policy applicants who have leave to remain in other categories are also able to apply for permission to extend as a Turkish ECAA businessperson.

Paragraph 4 of HC510

'In deciding these matters account is to be taken of all the relevant facts; the fact that the applicant satisfies the formal requirements of these rules for stay, or further stay, in the proposed capacity is not conclusive in his favour. It will, for example, be relevant whether the person has observed the time limit and conditions subject to which he was admitted; whether in the light of his character, conduct or associations it is undesirable to permit him to remain; whether he represents a danger to national security; or whether, if allowed to remain for the period for which he wishes to stay, he might not be returnable to another country.'

Paragraph 21 of HC510

'People admitted as visitors may apply for the consent of the Secretary of State to their establishing themselves here for the purpose of setting up in business, whether on their own account or as partners in a new or existing business. Any such application is to be considered on merits. Permission will depend on a number of factors, including evidence that the applicant will be devoting assets of his own to the business, proportional to his interest in it, that he will be able to bear his share of any liabilities the business may incur, and that his share of its profits will be sufficient to support him and any dependants. The applicant's part in the business must not amount to disguised employment, and it must be clear that he will not have to supplement his business activities by employment for which a work permit is required. Where the applicant intends to join an existing business, accounts should be produced to establish its financial position, together with a written statement of the terms on which he is to enter into it; evidence should be sought that he will be actively concerned with its running and that there is a genuine need for his services and investment. Where the application is granted, the applicant's stay may be extended for a period of up to 12 months, on a condition restricting his freedom to take employment. A person admitted as a businessman in the first instance may be granted an appropriate extension of stay if the conditions set out above are still satisfied at the end of the period for which he was admitted initially.'

Paragraph 43 of HC510

'Under sections 3(5)-(6) and 5(1)-(4) of the Immigration Act 1971 the Secretary of State may, if he thinks fit, make a deportation order requiring a person who is not *patria* to leave and to remain thereafter out of the UK:

- if the person has failed to comply with a condition attached to his leave to enter or remain beyond the authorised time;
- if the Secretary of State deems the person's deportation to be conducive to the public good;
- if the person is the wife or the child under 18 of a person ordered to be deported;
- if the person, after reaching the age of 17, is convicted of an offence for which he is punishable with imprisonment and the court recommends deportation.'

Paragraph 52 of HC510

'Deportation will normally be the proper course of action where the person has persistently contravened or failed to comply with a condition or has remained without authorisation. (So also where it has been recommended for deportation on conviction of entering the UK unlawfully). But full account is to be taken of all relevant circumstances before a decision is reached.'

Paragraph 67 of HC510

'Applications for the revocation of a deportation order will be carefully considered in the light of the grounds on which the order was made and of the case made in support of the application. The interests of the community, including the maintenance of an effective immigration control, are to be balanced against the interests of the applicant, including any circumstances of a compassionate nature. In the case of an applicant with a serious criminal record continued exclusion, for a long number of years, will normally be the proper course. In other cases, revocation of the order will not normally be authorised unless the situation has been materially altered either by a change of circumstances since the order was made or by fresh information coming to light which was not before the court that made the recommendation or the appellate authorities or the Secretary of State. The passage of time since the person was deported may also, in itself, amount to such a change of circumstances as to warrant revocation of the order. Since so much depends on other relevant circumstances, it is not practicable to specify periods as appropriate in relation to particular grounds of deportation. All applications for revocation will be carefully considered when made, but the Secretary of State does not himself initiate the review of deportation orders, with a view to deciding whether they need to be maintained, until they have been in force for at least 3 years.'

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[Eligibility for leave to remain](#)

Eligibility for entry clearance

This page tells you about the provisions under which Turkish nationals can apply for entry clearance in the form of a visa at a British embassy or high commission.

Under article 41 of the European Community Association Agreement (ECAA) the Home Office applies legislation as it was in 1973. The on entry 1973 business rules (HC509) state a person should apply for entry clearance at a post in the country or territory where they are living, if they wish to come and establish in business in the UK.

A person can enter in another capacity prior to obtaining leave. Entry clearance is not mandatory.

The following requirements for entry clearance for those coming to join an established business are in paragraph 31 of HC509:

- the applicant is bringing money of their own to put into the business
- the applicant will be able to bear their share of the liabilities
- the share of the profits will be sufficient to support them and their dependants
- the applicant will be actively concerned in the running of the business
- there is a genuine need for their services and investment
- the accounts of the business for previous years must be produced

The following requirements for entry clearance for those coming to establish a business on their own account are in paragraph 32 of HC509:

- the applicant is bringing into the country sufficient funds to establish a business
- the business can realistically support them and any dependants without the need to take employment

Dependants

If the applicant is coming to the UK with someone who has valid leave to remain as a Turkish ECAA businessperson, or a person who at the same time is being granted entry clearance as a Turkish ECAA businessperson they must be either the:

- dependent spouse
- civil partner
- unmarried partner
- child under 21

Paragraph 41 of HC510 states 'The family should be regarded as consisting of the person's wife, their children under 21, their other dependent children, and their dependants. Reference to 'wife' should be treated as including husband, civil partner, unmarried or same sex partner.

Granting entry clearance

Main applicants who meet the requirements of the on entry 1973 business rules (HC509) may be granted entry clearance for no more than 12 months and receive the endorsement: CAT D ECAA Business Code 2 restricting employment.

Dependant applications should be endorsed with either 'to join partner', 'to accompany partner', 'to join parent(s)' or 'to accompany parent(s)' and granted leave for a period in line with the principal applicant, Code 1.

Refusing entry clearance

Refusals must clearly set out which of the requirements of the on entry 1973 business rules (HC509) have not been met and why.

Administrative review

Since 6th April 2015, where an applicant is refused Entry Clearance in the Turkish ECAA business category, they will have a right to an administrative review. Those who are refused will be able to apply for such a review on limited grounds. In order to do so, they will need to use the [Points Based System \(PBS\) request form](#).

Biometric data

Applicants are required to provide biometric data when applying for entry clearance in this category.

Fees

Applications under this category are gratis.

Proviso

Posts should enter applications under this category on Proviso

Official – sensitive: start of section

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Official – sensitive: end of section

Fraud and abuse

Where an applicant has used or been party to fraud or abuse in their application, this does not mean they can be denied the benefit of the standstill clause. Rather, an assessment must be made as to whether the fraud/abuse was material in their ability to meet the ECAA requirements.

Extant deportation orders

If the applicant is applying overseas and you are aware of an extant deportation order you must tell them to apply for the deportation order to be revoked before making any further applications.

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[Fraud and abuse](#)

[Dependent partners](#)

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Related external links

[PBS request form](#)

General grounds for refusal

Eligibility for leave to enter

This page tells you about the provisions under which Turkish nationals can apply for leave to enter the UK at the border as ECAA business persons.

The application would be to establish themselves in business within the UK, either on their own account or as partners in a new or existing business, under the Turkish ECAA. If a person does not have entry clearance in this capacity but are likely to be able to satisfy the requirements they should be granted leave to enter for no more than 2 months.

This only applies if it would not be possible for the applicant to start running the business immediately on entry, but it is likely the applicant can satisfy the entry clearance requirements.

You must not grant 2 months' leave to enter if more time is needed to gather the evidence to support their intention to self-establish. These cases must be referred to an entry clearance manager (ECM).

For example, it may be appropriate to exercise discretion if a person would otherwise meet the entry clearance requirements for the purpose of establishing themselves in business except for the fact that:

- equipment required for the operation of the business has still to be purchased
- public liability assurance has not yet been approved
- the business has to be advertised locally
- business accounts are still being prepared if joining an established business

These cases must be referred to a chief immigration officer (CIO).

The onus is on the applicant to show they meet the requirements of HC509. Applicants who cannot show this must be refused leave to enter.

Paragraphs 12 and 65-69 of HC509 set out the reasons why an immigration officer may refuse leave to enter. Refusals must clearly set out which of the requirements of the 1973 business rules (HC509) have not been met and why.

Passengers with ECAA businessperson entry clearance

Applicants who arrive at port with valid entry clearance issued under the on entry 1973 business rules should normally be admitted on the basis of their entry clearance. This is unless it becomes clear that:

- false representations were employed or material facts were concealed, whether or not to the holder's knowledge, for the purpose of obtaining the clearance
- a change in circumstances since it was issued has removed the basis of the holder's claim to admission (although this is not necessarily grounds for refusal)

Applicants may also be refused leave to enter:

- on medical grounds
- on criminality grounds
- because the passenger is subject to a deportation order
- because presence in UK is not conducive to the public good

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General grounds for refusal

Eligibility for leave to remain

This page tells you about the eligibility of Turkish nationals to apply for leave to remain in the UK as a businessperson under the Turkish ECAA.

You must first apply the [pre-decisions checks](#)

All applicants must meet the requirements of paragraphs 4 and 21 of the after entry 1973 business rules (HC510) to be granted leave to remain.

The following 3 types of applicant are entitled to apply for leave to remain as Turkish ECAA businesspersons for the purpose of establishing themselves in business in the UK:

- applicants who have entered the UK with entry clearance as a businessperson under paragraph 30 of HC509
- applicants who have been granted entry clearance or leave to enter for 2 months where the content of the application did not fully support their business proposal - in considering these applications you must decide whether the gaps that existed in the original application have been fully addressed
- applicants who have been granted leave to enter the UK in another category but have later decided they wish to 'switch' into the Turkish ECAA business category to self-establish in business

Before deciding the application, you must check under paragraph 4 of the HC510 to see if:

- the applicant has breached immigration law whilst entering or remaining in the UK
- there are circumstances where it would be undesirable to allow them to remain in the UK in light of character and conduct
- they are a danger to national security
- allowed to remain for the period for which they wish to stay, they might not be returnable to another country

When considering an application, you must apply paragraph 4 of the HC510 and take account of breach of conditions, character and conduct, national security and returnability.

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[Refusal wording where an applicant is joining an existing business](#)

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[Pre decision casework](#)

Eligibility for indefinite leave to remain

This page tells you about the eligibility of Turkish nationals to apply for indefinite leave to remain (ILR) in the UK as a businessperson under the Turkish ECAA.

Under the provisions of the Turkish Business ECAA there is no route to settlement for Turkish ECAA business persons or their dependants. This was confirmed in *Aydogdu v SSHD* [JR/15737/2015] and *Bektas Alagoz* [2017] CSOH 27. While the implications of the judgment was being examined, settlement applications submitted prior to 16 March 2018 continued to be processed in line with the guidance below.

ECAA settlement cases submitted before 16 March 2018

Where a Turkish ECAA Business person submits an application for ILR before **16 March 2018** this should be assessed in line with the criteria in this section.

Whether the applicant can be granted permission to settle in the UK depends on a number of factors. This includes evidence to show they have spent a continuous period of 4 years in the UK, of which the most recent period of leave must be as a Turkish ECAA businessperson and the rest made up of leave as:

- a Turkish ECAA businessperson
- a Tier 1 (Entrepreneur) migrant
- a businessperson
- an innovator

An applicant admitted in the first instance for a limited period who has remained in the UK for 4 years as a:

- businessperson
- self-employed person
- person of independent means

may have the time limit on their stay removed unless there are reasons for maintaining it.

Before deciding the application, you must check if the applicant has breached immigration law whilst entering or remaining in the UK or if there are circumstances where it would be undesirable to permit them to remain in the UK because:

- of either their character, conduct or associations
- they represent a danger to national security
- if allowed to remain for the period they wish to stay they might not be returnable to another country

ECAA settlement cases submitted on or after 16 March 2018

In line with the Aydogdu and Alagoz judgments above, there is no provision for the granting of ILR under the provisions of the Turkish ECAA.

While such persons are not eligible for settlement under the ECAA, further periods of 3 years' leave should be granted to any applicant who has erroneously applied for Settlement -and meets the necessary ECAA requirements for leave to remain.

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Pre-decision casework

This page tells you about the checks that you must make before you consider an application for leave to remain as a self-employed Turkish businessperson under the Turkish ECAA.

Applicants must provide:

- their current signed passport
- the passport of each dependant included as part of the application
- 2 identical passport-size photographs of each applicant taken within the last month
- an application form, which is compulsory and also serves as an application for a biometric residence permit (BRP)

Before considering the application you must check that:

- the applicant's identity has been confirmed through biometrics
- security checks have taken place within the last 3 months
- the 'person details' on CID match those in the passport
- entry clearance records on CRS support the application
- the key documents tracking screen has been updated
- the address details on CID are up to date
- the representative's details have been entered
- the date of postmark and date of expiry of last leave are correct
- biometrics have been taken for the applicant (for applications submitted after 29 February 2012)

You must also carry out these checks for each dependant included in the application.

If any of the recorded details are incorrect, you must change them as necessary. You must refer suspected forged documents to the technical support team for advice.

You must check all previous cases on CID. You must also update the case notes on CID before deciding whether further information is required or whether a decision to grant or refuse the application can be made, based on the evidence already provided.

Biometric results

You must check that biometrics have been verified before you make a decision. The results can be located on the 'admin events' screen on CID and the Identity Card for Foreign Nationals (ICFN) database. If the applicant fails to provide this information, you must reject the case and return all documents to the applicant.

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Related external links

Biometric information

Breaches of immigration law and discretion to refuse LTR

This page tells you about the requirements of paragraph 4 of HC510 and how to consider cases under the Turkish EC Association Agreement (ECAA) category where it might be reasonable to exercise discretion to refuse leave to remain, particularly if the applicant has breached immigration law or refusal is justified on conducive or conduct grounds.

Paragraph 4 of HC510

This paragraph states:

‘In deciding these matters account is to be taken of all the relevant facts; the fact that the applicant satisfies the formal requirements of these rules for stay, or further stay, in the proposed capacity is not conclusive in his favour. It will, for example, be relevant whether the person has observed the time limit and conditions subject to which he was admitted; whether in the light of his character, conduct or associations it is undesirable to permit him to remain; whether he represents a danger to national security; or whether, if allowed to remain for the period for which he wishes to stay, he might not be returnable to another country.’

Assessing cases under paragraph 4

While paragraph 4 suggests you must use discretion to take into account all the factors of an application, applicants will not normally be allowed to benefit from:

- a breach of conditions
- circumstances where it would be undesirable to permit them to remain in the UK because of their character, conduct or associations
- circumstances where they represent a danger to national security

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Breach of conditions

This page tells you about breach of conditions when a person is applying as a self-employed Turkish businessperson under the Turkish ECAA.

Case law such as that of C-186/10 Oguz and Ascioğlu v SSHD [2012] EWCA Civ 1183 established that applicants who have breached immigration law must still be assessed under the 1973 rules and not the more restrictive current Immigration Rules. Under the 1973 rules breaches of immigration law in business cases are covered by paragraph 4 of HC510.

Just because an applicant has worked in breach of their conditions does not mean you must automatically refuse the case under paragraph 4 of HC510. Instead you must consider an applicant's breach of immigration law on an individual basis. This is because a breach of conditions can vary in different ways and so have a different impact on a case.

You must consider all the relevant circumstances of an application, but applicants must not normally be allowed to benefit from breaches in immigration law. This includes first time or repeat applications based on previously established businesses, or where there are only superficial changes such as a change in name or change in the status of a business from sole trader to limited company.

The following factors are relevant when you decide if an application, where a breach of immigration law has occurred, should be refused. An applicant:

- has overstayed a previous period of leave
- has entered or sought to enter the UK illegally
- has sought or obtained leave by deception such as making false representations or failing to disclose material facts in the application (fraudulent and abusive conduct)
- has breached their conditions of leave to enter or remain (for example, where the applicant started trading before the initial grant of leave and this put the applicant in a position to meet the requirements of paragraph 21, in circumstances where they should not have been able to do so otherwise) if an applicant has breached their conditions of temporary admission or has absconded from temporary admission
- has made an asylum claim that has been refused
- has previously used fraudulent or abusive conduct
- has demonstrated there is a material link between the current business proposal and previous fraudulent and/or abusive conduct
- whose conduct makes it undesirable to grant them leave for example where there is evidence of criminality
- is liable to deportation

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Entered or sought to enter illegally or by deception

This page tells you about how to consider applications from people who are applying as self-employed Turkish businesspersons under the Turkish ECAA and who have entered or sought to enter the UK illegally or by deception.

Entered or sought to enter illegally

Applicants who have only been able to establish in business through having entered or sought to enter the UK illegally must normally be considered for refusal under paragraph 4 of HC 510, with reference to their conduct (for example, clandestine entry or someone on temporary admission (TA) who absconds). You must also normally refuse these applications under paragraph 21 and refer to them being unable to secure leave as a businessperson because they were not admitted to the UK.

Leave sought or obtained by deception

Applicants who have only been able to apply to establish in business through having sought or obtained leave by deception (that is, they have made false representations, presented false documentation or failed to disclose material facts), must normally be considered for refusal under paragraph 4 of HC510.

You must consider all the relevant circumstances of each case, the extent of deception or abuse and the culpability of the applicant.

Despite the deception, where the circumstances of the application merit a grant under paragraph 4 of HC510, you can use discretion to consider the case on its merits to establish in business under paragraph 21 of HC510.

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Breach of the conditions of leave to enter or remain

This page tells you about how to take into account a breach of conditions of leave to enter or remain from someone applying as a self-employed Turkish businessperson under the Turkish ECAA.

You must consider an applicant's breach of condition under paragraph 4 of HC510 on an individual basis, taking into account all the circumstances surrounding the breach.

Applicants who were admitted to the UK with conditions that do not allow them to work or establish in business and have then started trading must be considered for refusal under paragraph 4 of HC510, as they have breached their conditions of leave. But you must consider all the relevant circumstances:

- the extent of the breach
- whether the business has generated employment for other (legal) workers
- whether it fills a gap in the labour market for identified skills shortage occupations
- the culpability of the applicant

Such factors may weigh in favour of the applicant, despite the breach of conditions, and merit a grant of leave under paragraph 21 of HC510 to enable the applicant to establish in business under paragraph 21 of HC510.

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Working in breach

This page tells you how to consider an application as a self-employed Turkish businessperson under the Turkish ECAA if the applicant is working in breach of conditions.

The judgment in *Ascioglu v SSHD* [2012] EWCA Civ 1183 (formerly known as *KA(Turkey)*) stated that the phrase 'fraudulent and abusive conduct' was not appropriate when referring to instances where the applicant has started trading before getting approval from the Home Office. Therefore, this is referred to as 'working in breach'.

Assessing cases where the applicant has worked in breach

You must first assess if the applicant's working in breach was incidental or material to their ability to meet the requirements of paragraph 21 of HC510.

If you consider the breach incidental then it cannot be used as a basis of a refusal. If the breach is considered to be material, then it can be used as a basis for refusal. Working in breach would be considered incidental if:

- it does not materially affect the ability of the applicant to meet the requirements under paragraph 21 – such conduct should not on its own lead to an automatic refusal of the application unless there are other additional factors which may weigh against the applicant under paragraph 4, an example of an incidental breach might be where the business met all the requirements of paragraph 21 before the breach and the working in breach was for a short period only
- the working in breach took place during the time when the Home Office was enforcing its 'pragmatic approach' to ECAA cases before July 2008 – this was a period in which those who had set up their business and then worked in breach while their application was being processed were not refused only on the basis that they had worked despite their leave

Working in breach would be considered material (and so more likely to lead to a refusal under paragraph 4) if it affects the ability of the applicant to meet the requirements under paragraph 21. For example, if the breach enabled the applicant to meet the requirements of paragraph 21 in circumstances where they would not be able to meet them otherwise and this may amount to an abuse of rights. This should not automatically result in refusal but is likely to weigh more heavily against the applicant when considering paragraph 4. An example might be where the money gained from working in breach allowed the applicant to buy a share of an existing business that formed the basis of the ECAA application

Where the working in breach occurred after July 2008, (after the end of the 'pragmatic approach' taken by the Home Office to these types of cases) this will count more heavily against the applicant and so make a refusal under paragraph 4 more likely.

Breaches of conditions where no trading has taken place

An applicant who has undertaken some research or other preparatory work without actually trading may have breached conditions of leave, but will normally be allowed to meet the requirements of paragraph 4 of HC510.

You can use discretion to consider the case on its merits to establish in business under paragraph 21 of HC510 as this type of breach is not sufficiently serious to argue that the applicant was only able to make their business application as a result of the breach of conditions.

Establishing in business whilst on temporary admission

Applicants who establish in business whilst on temporary admission will normally be considered for refusal under paragraph 4 of HC 510.

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Criminality

This page tells you about considering business applications under the Turkish ECAA when there is evidence of criminality.

You must consider refusing applications if it would be undesirable to allow the applicant to remain in the UK because of their character, conduct or associations, or if they represent a danger to national security under paragraph 4 of HC 510.

Since December 2012 new sentencing thresholds have replaced the assessment under the Rehabilitation of Offenders Act 1974. If an applicant with a criminal conviction is applying for leave as a business person under the Turkish ECAA on or after 13 December 2012, you must consider these new sentencing thresholds.

You must consider all the relevant circumstances of the case. For example the:

- type and severity of the crime committed
- sentencing court's view of the seriousness of the offence as reflected in the sentence imposed
- result of any appeal upon that sentence
- length of time which has passed since evidence of criminality
- culpability of the offender
- tendency to re-offend
- harm to the victim and the effect of that type of crime on the wider community

Sentencing thresholds (applications made on or after 13 December 2012)

In line with the current sentencing thresholds you should consider refusing an applicant who is applying for limited leave or indefinite leave to remain if they:

- have been convicted of an offence and sentenced to imprisonment for at least 4 years
- were convicted of an offence and sentenced to imprisonment for at least 12 months but less than 4 years, and 15 years has not passed since the end of the sentence for indefinite leave to remain or 10 years for limited leave.
- were convicted of an offence and sentenced to imprisonment for less than 12 months, and 7 years has not passed since the end of the sentence for indefinite leave or 5 years for limited leave.
- have, within the 24 months immediately before the date of the application for indefinite leave to remain, been convicted of or admitted to an offence and received a non-custodial sentence or other out of court disposal recorded on their criminal record. Refusal of limited leave applications with non-custodial sentences is discretionary.

For cases involving made prior to 13 December 2012 and which involve criminality, caseworkers should contact Criminality Policy in the first instance.

Official – sensitive: start of section

The information on this page has been removed as it is restricted for internal Home Office use.

Official – sensitive: end of section

Applicants subject to a deportation order

If an applicant has applied for leave under the Turkish ECAA, but is subject to a deportation order, such applications should normally be refused. You must consult your senior caseworker in the first instance should such a case arise.

Referrals to criminal casework

When an applicant has been convicted of a criminal offence, you may need to refer the application to criminal casework (CC).

Before you casework such a case, you must check if the applicant meets the CC referral criteria. If the applicant meets the criteria and CC accept it, you must refer the case to CC. You must not grant an application which is of interest to CC. For more information, see the guidance on when to refer a case to criminal casework (CC).

Convictions falling below the criminal casework threshold

There may be circumstances where a person has been convicted of a criminal offence which, by its nature or circumstances, may suggest the person's presence in the UK is not conducive to the public good, but the person has received a sentence falling below the threshold for referring the case to CC.

If a case falls into this category you must refer it to your team leader to consider if the case falls for refusal under paragraph 322(5) of the Immigration Rules.

Examples could include (but are not limited to):

- offences involving violence
- sexual offences
- offences against children
- serious drug offences

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Undesirable to grant leave

This page tells you about the circumstances when it would be undesirable to grant leave to someone applying as a self-employed Turkish businessperson under the Turkish ECAA.

You must consider refusing applications where it would be undesirable to allow the applicant to remain in the UK in light of their character, conduct or associations, or where they represent a danger to national security under paragraph 4 of HC 510.

Character, conduct or associations

While a criminal conviction is not the only reason where refusal could be justified, where an applicant declares such a conviction which would be deemed as spent, you must not take it into account when deciding the case.

You must consider all the relevant circumstances of the case. For example, the:

- type and severity of the crime committed
- sentencing court's view of the seriousness of the offence as reflected in the sentence imposed
- result of any appeal upon that sentence
- length of time which has passed since evidence of criminality
- culpability of the offender
- tendency to re-offend
- harm to the victim and the effect of that type of crime on the wider community

Only in exceptional circumstances should a spent conviction be held against an applicant. You must weigh up these considerations against the need to protect the public.

Other areas where refusal may be justified on character, conduct and association would include (but is not limited to) scenarios where an applicant has demonstrated a propensity for circumventing the requirements of the UK immigration system or whose presence may harm the wider community. Each case should be assessed on its own merits.

Circumstances where refusal may be justified on grounds of danger to national security

If you have information that suggests the applicant poses a danger to national security, you must refer the case to your senior caseworker in the first instance. They will then work with the relevant departments or sections.

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Deportation

This page tells you about what action to take if a person applying as a self-employed Turkish businessperson under the Turkish ECAA is liable to deportation.

Liability to deportation

Applicants who are liable, or become liable to deportation must be handled in line with domestic legislation and guidance governing deportation. You must refer to criminal casework (CC).

Current deportation orders

If a current deportation order against an applicant comes to light, the applicant must be referred to CC for further guidance.

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[Referring cases to criminal casework](#)

Fraud and abuse

This page tells you about what action to take if a person applying as a self-employed Turkish businessperson under the Turkish ECAA has committed fraud or abuse.

Fraud and abuse

Case law has established that even where an applicant's behaviour could be deemed fraudulent and abusive, they should not be *prima facie* prevented from benefiting from the 'standstill' clause. As such their applications must still be considered under the 1973 rules.

Previous fraudulent conduct

Applicants who have relied on previous fraudulent conduct in making an application must normally be considered for refusal under paragraph 4 of HC510. For example, the applicant entered into employment while an illegal entrant to the UK. You must consider all the relevant circumstances, the seriousness of the fraud and the culpability of the applicant.

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Types of business structure

This page tells you about the different types of business structures you may come across.

The applicant may wish to start up in business as either:

- a sole trader
- the director of a limited company
- legal partnership

Sole trader

This is the simplest way to run a business. A sole trader owns the assets of the business, is responsible for all debts and liabilities and is not required to file annual returns with Companies House. The business accounts will be made up to the end of the financial year.

Director of a limited company

A director is an employee of the company and all debts and liabilities are the responsibility of the company. The director's level of financial investment must be proportional to their role in the business.

Annual returns, often abbreviated so as not to alert competitors, must be filed with Companies House within 10 months of the year end after incorporation. Directors may take a dividend each quarter.

Partnership

This is a legal entity with shared decision making. The profits are shared according to an agreed split between the partners. The applicant must have an equal or controlling interest in the company with a share of responsibility. A partnership agreement is a key document to cover all the 'what ifs'.

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Assessing the applicant meets the requirements

This page tells you about assessing whether a leave to remain application from a person applying as a businessperson under the Turkish ECAA meets the minimum requirements of paragraph 21 of the 1973 business rules.

The requirements of the 1973 business rules are that the applicant:

- will be devoting sufficient funds or assets to invest in the business in proportion to their interest in the business
- can show the funds or assets are their own
- can bear their share of the liabilities which the business may incur
- can show their part in the business does not amount to disguised employment
- can show their share of the profits of the business is enough to support themselves and any dependants, without recourse to employment or public funds

Some types of business represent greater financial investment and risk than others, but each application must be considered on its merits.

Although there is no formal requirement in the 1973 business rules for applicants to provide a business plan, not including this document may undermine the credibility of the business proposed.

A business plan should set out:

- a summary of the business proposal
- an outline of the marketing and sales strategy
- a timetable for establishment
- the financial forecasts for the business over the first 12 months of trading

If the applicant is joining an existing business they should provide:

- business accounts (preferably audited) for previous years
- a statement of the terms on which they are joining the business
- evidence they will be actively concerned with the running of the business
- evidence that there is a genuine need for their services and investment

You must also be satisfied with the credibility of the evidence provided.

There may be cases where the business proposal on paper meets the minimum requirements of the 1973 business rules but the applicant has not demonstrated a genuine intention to set the business up or is incapable of running the business as proposed.

The applicant's conduct may suggest the application is an attempt to secure leave rather than a genuine intention to self-establish in business.

The following examples may indicate such a situation, although the list is not exhaustive:

- the applicant has been in the UK for years with no sign that they had any interest in setting up a business, but when facing enforcement action submits a poor business plan in order to frustrate removal
- the applicant has already been refused leave under the ECAA, but when faced with enforcement action submits exactly the same business plan without any new evidence, making it likely the intention is again to frustrate removal

It may well be that in having no intention to set up a genuine business, the application will fall for refusal in any case (for example, they cannot demonstrate they can devote the required funds to the business). However, if the requirements are met on paper, but you are satisfied the applicant will not be setting up a real business and has only made the application to secure leave, such abusive conduct may warrant refusal under paragraph 4 of HC 510.

Where an applicant is already lawfully in the UK and meets the requirements for setting up one of the business types in this section they may be granted a 12 month 'switching' leave period on code 2 conditions. You must be satisfied that the business is real and that the application hasn't been made just to secure leave.

You must refuse applications that fail to meet the requirements of the 1973 business provisions under paragraph 21 of the 1973 rules (HC510).

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Evidence the applicant is devoting sufficient funds or assets to the business

This page tells you about what type of documents should be submitted to show that a person applying as a businessperson under the Turkish ECAA is devoting assets of their own to the business proportional to their interest in the business.

While the 1973 rules do not specify the types of documents to be submitted in support of a business application, you must assess if not providing relevant and/or requested documents undermines the credibility of the applicant's business proposal.

You must decide if the applicant is devoting funds or assets to the business. If the applicant is not devoting any funds or assets it means the business is not one that meets the requirements of the 1973 business rules and you must refuse it.

There is no minimum level of investment, but it must be proportional to the business needs and generate enough net profit to support the applicant and any dependants.

If the applicant is joining an existing business, you must be satisfied from the evidence provided that the applicant will be actively concerned with its running and that there is a genuine need for their services and investment.

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Evidence the funds or assets belong to the applicant

This page tells you about what type of documents should be submitted to show that a person applying as a businessperson under the Turkish ECAA is devoting funds or assets of their own to the business which can be invested on a long-term basis.

While the 1973 rules do not specify the types of documents to be submitted in support of a business application, caseworkers should assess whether failure to provide relevant and/or requested documents undermines the credibility of the applicant's business proposal.

Evidence the funds or assets belong to the applicant

Applicants should be able to provide sufficient evidence to show that:

- the source of the funds is legitimate
- the funds are under their own control
- there is no possibility that the money may be recalled or withdrawn from the business at short notice

They should provide evidence of the available funding. This should include original bank statements for the last 6 months. You may request a translation of those bank statements that are not in English as necessary. Additional evidence must be provided to show the source of any unusual or irregular deposits into the applicant's account, such as:

- transfers of funds from sources overseas
- assets from the sale of land, gold or property overseas
- gifts of money from business associates and close family members

You must convert money transfers from overseas into pounds sterling so they can be assessed. The official exchange rate used by the Home Office is the one produced by OANDA. You must use the exchange rate on the [OANDA website](#) on the date on which the application was raised. This is an independent website which the Home Office is not responsible for.

You may accept electronic bank statements from an online account with a supporting letter from the bank on company headed paper confirming that the documents are authentic. Or you can accept electronic bank statements bearing the official stamp of the bank issuing the statements. This stamp must appear on every page of the statement.

You may use discretion if the level of financial investment is small in comparison to the expected profits generated, or where gifts from family members have been made.

In all cases you must be satisfied enough evidence has been provided to show the money has been gifted by an individual who is financially able to make the gift, without the possibility of needing to recall the money at short notice.

Gifts from a business associate are not acceptable.

Applicants must show that the majority of funds to be invested are their own. Loans, either in the form of a business bank loan or from another source such as a family member, may form part of a funding package to set up in business but they must not be considered as assets belonging to the applicant.

If they rely in part on a loan, they must show their business will realistically make sufficient profit to be able to repay the loan as well as to support the applicant and any dependants.

You must refuse applications where a loan forms the only basis of investment.

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Applications where the documents provided show the applicant has invested money in the business but this money does not represent their own assets must be refused under paragraph 21 of the 1973 rules (HC510).

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Referring documents to the NEYH regional verification team

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[IBAN checker](#)

Evidence of business accounts for the previous year

This page tells you about using business accounts to assess the merits of a business application under the Turkish ECAA if the applicant is joining, or taking over an existing business.

The financial statements of a business show how it is performing and indicate the financial position of the business in terms of its assets and liabilities.

The financial statements normally consist of a profit and loss account (P&L) showing business turnover and net profit over a trading period of 12 months, and a balance sheet (BS) which is a snapshot of the overall financial position of the business at a particular time.

The accounts (preferably audited) must be professionally produced by a qualified or chartered accountant.

You must be satisfied that:

- the business is viable (not insolvent)
- the applicant can bear their share of the debts or liabilities of the business
- the proposed investment is proportional to their role in the business
- the net profit of the business is sufficient to support the applicant and any dependants included in the application

Management accounts may be submitted for the current year.

Accounting requirements are different depending on whether the applicant is in business as a:

- sole trader
- director of a limited company
- legal partnership

For a sole trader, the net profit of the business will be taxed as income and can therefore be compared with the income from self-employment shown on other documents submitted such as:

- tax returns
- tax documents
- self-assessment tax calculations

You must also be satisfied that the details are credible when compared with any other evidence submitted such as invoices, contracts and business bank statements.

For a limited company, the net profit is distributed to the shareholders in the form of dividends. The director of a limited company is regarded as an employee of the company and the director's income will be derived from remuneration and dividends. The income must correspond with other documents submitted such as:

- tax returns
- tax documents
- self-assessment tax calculations
- P60 certificates
- wage slips

For a partnership, each partner will take an equal share of the net profits unless the partnership agreement states otherwise.

Applications to join an existing business where business accounts have not been provided, or are incomplete, must be refused under paragraph 21 of HC510 for the reason that not enough evidence has been provided to show the financial position of the business that they will be joining or taking over.

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Evidence the applicant can bear their share of debts and liabilities

This page tells you about what type of documents should be submitted to show that a person applying as a Turkish businessperson under the Turkish EC Association Agreement is able to bear their share of any liabilities the business may incur.

While the 1973 rules do not specify the types of documents to be submitted in support of a business application, you must assess if failing to provide relevant and/or requested documents undermines the credibility of the applicant's business proposal.

Applicants are responsible for any debts or liabilities that exist when they buy or join an existing business, or debts and liabilities run up by the business in the course of trading, such as overheads and purchasing large quantities of stock.

The following figures shown on the balance sheet (BS) will be relevant in assessing if the applicant can bear their share of the liabilities:

- the value of the business's fixed assets as shown on the BS (land, buildings, machinery, goodwill, trademarks, web site domain names)
- the current assets of the business (stock, work in progress, debtors, cash in hand)
- short-term liabilities falling due within one year (business loans, overdrafts, VAT, PAYE, Corporation Tax)
- longer term liabilities falling due after one year
- shareholder's funds
- net profit or loss made by the business in the preceding 12 months

The applicant is not allowed to claim public funds in the UK or add to their business activities through paid employment, to top up the net profits of the business in order to meet any debts or liabilities of the business. However, applicants may have insurance cover to meet the cost of any liabilities that may arise, such as a claim for damages.

Applicants may not need to show they can meet their debts or liabilities straightaway. You must consider the size of the debt in relation to the overall value of the business and whether the business is likely to wipe out the debts or liabilities from the profits of the business in following years.

Applications with documents that show the business carries significant debts or liabilities that cannot be met by the applicant must be refused under paragraph 21 of the 1973 rules (HC510).

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Proposed business is disguised employment

This page tells you about the meaning of disguised or concealed employment for business applications under the Turkish ECAA.

This is when the nature of the proposed work is actually employment and not self-employment. Indicators of 'employment' and 'self-employment' are below. It should be noted however, that while Directors of companies can technically be 'employees' (for example, they could be paying Class 1 National Insurance) they can still come within the scope of the Business ECAA arrangements.

Disguised employment means the applicant claims to be self-employed when they are actually employed. It is defined as a proactive attempt to present employment as self-establishment. For example, the claimed investment is a transfer of money to the business owner while the applicant is managing the business on behalf of the owner.

An applicant is self-employed if they can demonstrate they are in business on their own account and bear the responsibility for the success or failure of that business. However, as above, caseworkers need to be mindful of the position of Directors of companies.

You must refuse applications when you identify disguised employment.

In some cases the applicant may genuinely believe that what they are doing is self-employment as they are providing services for a number of clients, but may actually be an employee with multiple employers. In these cases the application must be refused.

You must apply the correct 'multiple test' to decide whether the applicant is employed rather than self-employed by considering the breadth of evidence provided. The reasons why an application falls for refusal can then be clearly set out in the refusal notice.

Applicants are probably self-employed if they:

- run their own business and take responsibility for its success or failure
- have several customers at the same time
- can decide how, when and where they do their work
- are free to hire other people to do the work or help at their own expense
- provide the main items of equipment to do their work

Applicants are probably employed if they:

- work for one person at a time who takes on the risks of the business
- can be told how, when and where they do their work

- can be moved from task to task
- have to do the work themselves
- have to work a set amount of hours or set pattern of work
- are paid a regular amount according to the hours worked
- receive overtime pay, sick pay, holiday pay or bonus payments
- are 'part and parcel' of an organisation and receive employee type benefits such as a pension, access to grievance procedures
- casual or part-time work can constitute employment

There are a range of neutral factors which can be taken into account such as:

- the length of any contracts provided
- how they can be terminated
- whether tax and national insurance contributions have been deducted by the employer

You can request an employment status check from HM Revenue & Customs (HMRC) if required. You must email the referral form to your higher executive officer (HEO) or senior caseworker for approval.

Applications where the documents provided demonstrate the applicant has an involvement in the business which amounts to employment must be refused under paragraph 21 of the 1973 rules (HC510).

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Evidence of sufficient profits to support applicant and any dependants

This page tells you about how to assess if a person applying as a Turkish businessperson under the Turkish ECAA can realistically maintain and accommodate themselves and any dependants without recourse to employment or public funds.

Applicants must demonstrate that a sufficient level of profit from the business will be generated to maintain and accommodate themselves and any dependants without employment or public funds.

Evidence of the net profit (monies remaining after deducting business expenses) generated from the business should be provided in the form of:

- business accounts
- tax returns
- other form of business evidence

While the 1973 rules do not specify the types of documents to be submitted in support of a business application, you must assess whether failure to provide relevant and/or requested documents undermines the credibility of the applicant's business proposal.

You must take care not to count capital purchases as revenue expenses as these items will be used for several years. Depreciation expenses can also be added back.

You must not take into account any income from other sources such as:

- investment
- sub-letting
- bank account interest

Contributions from any dependants included in the application must not be considered, as they are dependants of the main applicant. This includes any contributions made in the form of mortgage repayments and accommodation costs where the dependant is named on the mortgage or tenancy agreement.

Evidence of personal expenditure (outgoings) should be provided in the form of personal bank account statements and other documents showing significant personal expenditure. These include:

- tenancy agreements
- mortgage statements
- council tax bills
- utility bills

Outgoings include any personal loan repayments which may have been declared by the applicant or shown as regular deductions from the applicant's personal bank account statements.

Outgoings may also include commitments to support family members living abroad.

You may use discretion if there are particular circumstances to do with assessing if the applicant can realistically maintain and accommodate themselves and any dependants included in the application without recourse to employment or public funds.

Examples include:

- the accuracy and credibility of the evidence of income and outgoings must be taken into account in considering all the supporting documentation provided by the applicant
- the applicant may have provided business accounts from the previous financial year and recent evidence of maintenance and accommodation so that up to date management accounts are required to inform the decision
- the applicant may not have generated the level of profit required throughout the first 2 years of their stay, but has remained in business and maintained and accommodated themselves during that time without recourse to employment or public funds
- you must consider the overall performance of the business across several years, and if poor performance has been offset by good performance
- evidence has been provided to explain why the applicant is unable to present results for a full year's trading due to factors such as late start ups, sick leave, or paternity leave
- if the business is producing losses or only marginal profits and is incapable of supporting anyone in the UK or have a negative impact on the welfare of the applicants, this may be a reason not to exercise discretion in the applicant's favour

Applications where insufficient profit has been generated to maintain and accommodate the applicant and any dependants must be refused under paragraph 21 of HC510.

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Applicant receiving public funds

This page tells you about how to consider applications for businesspersons under the Turkish ECAA when the applicant has received public funds while living in the UK.

Turkish nationals on low income are entitled to claim a range of benefits while living in the UK because of an agreement between the UK and Turkey. These include:

- Attendance Allowance
- Carer's Allowance
- Child Benefit
- Child Tax Credit
- Council Tax Benefit
- Disability Living Allowance
- Housing Benefit
- Income-based Jobseekers Allowance
- Income related allowance ESA (IR) – formerly income support
- Personal Independence Payment
- Social Fund payment (or discretionary support payment which replaces the Social Fund)
- Universal Credit
- Working Tax Credit

If you find the applicant has received public funds, you must consider if they could maintain and accommodate themselves from their share of the profits of the business if they were to immediately stop claiming those funds. Under paragraph 21 of HC510, applicants must show their share of the profits from the business is sufficient to support themselves and any dependants.

You must not refuse an application if the person can maintain and accommodate themselves if they were to stop claiming public funds, unless there are other reasons for refusal.

But applicants are not allowed to 'top up' their business profits with benefits in order to show that their business is making sufficient profits, as they still need to meet the requirement that the profits of the business alone can support them and their dependants.

If you find that the applicant has received public funds in breach of their conditions and they are unable to maintain and accommodate themselves without those funds you must refuse the application under paragraphs 4 and 21 of HC510.

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Related external links

Public funds

Evidence to assess the applicant has met the requirements of the Turkish ECAA

This page tells you about what documents an applicant should submit with an application to prove they meet the requirements of the Turkish ECAA.

While the 1973 rules do not specify the types of documents to be submitted in support of a business application, you must assess if failure to provide relevant and/or requested documents undermines the credibility of the applicant's business proposal.

The documentary evidence caseworkers may expect to see include:

- application form ECAA2 (which is a specified form)
- business plan
- business accounts for the previous 2 years (if appropriate)
- funding evidence
- bank statements, overseas money transfers, bank loans
- certificate of registration with Companies House (if appropriate)
- tax and/or national insurance (NI) registration and tax documents
- partnership agreement
- copies of contracts and invoices
- educational and vocational qualifications
- testimonials
- proof of advertising
- premises agreements
- licence required or obtained
- staff details
- insurance details
- evidence of personal living costs

Requests for further information

You must decide on a case by case basis whether it is appropriate to request further information from the applicant. Where a refusal is based partly or wholly on the applicant failing to provide necessary documentation, you must make it clear in the decision letter why and how any missing documents led to a refusal.

Verification

You must verify the documents with the appropriate agency to determine if the documents are genuine, false or inconclusive if you have reasonable doubts that any supporting documents:

- are genuine – including passports
- do not reflect the claims made in the application

You can also conduct verification checks on key documents such as references and relevant business documents by contacting the provider in the usual way. All verification reports must be recorded in the case notes and linked to the file.

If documents are confirmed as being false, you must consider refusing the application under paragraph 4 of HC510.

Fraudulent and abusive conduct is the term used when referring to the submission of false documents and/or statements to gain leave to remain in the UK.

Interviewing applicants

If you are unable to determine whether an application is genuine solely from the documents provided you must consider if it is necessary to interview the applicant in person.

For example, you may have concerns about:

- the authenticity of the documents provided
- inconsistencies in the evidence provided
- significant omissions in the documents required
- the involvement of a third party in preparing the application
- applications which appear to be identical with other applications previously submitted
- the credibility of the application

The interview questions and record sheet must be linked to the file.

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Bank statements showing funds required to invest

This page tells you about how to assess whether a person applying as a businessperson under the Turkish ECAA has sufficient funds to invest in the business.

This is to show they have a genuine intention to invest their own money in the business.

Although there is no formal requirement in the 1973 business rules for the applicant to provide bank statements, if the applicant fails to provide this evidence it may undermine the credibility of their claim that they have a genuine intention to self-establish.

The applicant must provide evidence of available funds. This will usually include 6 months of original bank statements, or less if the source of the funds is clearly shown. You may request a translation from the applicant of bank statements that are not in English as necessary.

More evidence should be provided to show the source of unusual or irregular deposits into the account, such as:

- transfers of funds from sources overseas
- assets from the sale of land
- gold or property overseas
- gifts of money from business associates and close family members

You may accept electronic bank statements from an online account with a supporting letter from the bank on company headed paper confirming the documents are authentic. Or where available, you can accept electronic bank statements bearing the official stamp of the bank issuing the statements. This stamp must appear on every page of the statement.

You must not automatically refuse applications where the applicant has not provided bank statements under paragraph 21 of the 1973 rules (HC510) unless there are other reasons for refusal. Self-establishment must be assessed on the basis of the business activities proposed or being undertaken.

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Registered to make tax and national insurance contributions

This page tells you about where a person applying as a businessperson under the Turkish ECAA needs to show they have registered to make tax and national insurance contributions as a self-employed businessperson and have received the relevant insurance and other business documents to support the application.

Self-employed businesspeople are legally required to register for the payment of income tax and national insurance contributions, but this is not a requirement of the 1973 business rules.

Applications where the applicant has not registered to make tax and national insurance contributions must not be refused under paragraph 21 of the 1973 rules (HC510) unless there are other reasons for refusal. Self-establishment must be assessed on the basis of the business activities proposed or being undertaken.

One or more of the documentary evidence listed below, will help confirm whether the business is active and that applicant is genuinely self-employed.

Evidence may include:

- tax returns (P35)
- Unique Tax Reference number (UTR)
- self-assessment tax calculations (SATCs)
- national insurance receipts (class 2 and 4)
- invoices
- contracts for work undertaken as a subcontractor (for example, contract for services)
- testimonials
- references
- public liability insurance
- employer's liability insurance
- premises of personal licences where appropriate (for example, if selling liquor).

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Evidence of experience and qualifications

This page tells you about how a person's experience and qualifications can be used in part to assess their ability to establish in business or continue operating their business when applying as a businessperson under the Turkish ECAA.

Experience and qualifications are not requirements of the 1973 business rules but should be taken into account as part of the overall assessment of the evidence provided.

You must examine this evidence in the context of the proposed business, taking into account the other supporting evidence provided. You must check the evidence is correct and genuine using CRS to check relevant information on previous visa applications.

In some circumstances, common sense will tell you it may be possible for the applicant to establish in business without relevant experience or qualifications. In other circumstances, a lack of previous experience and/or qualifications may be a barrier to establishing a business. For example, it could extend the time taken to establish the business and slow the rate of growth of the business in subsequent years.

All businesspersons are expected to show they have at least a basic understanding of business and financial management including cash-flow management.

All qualifications must be recognised in the UK and be acceptable for the purpose for which they are proposed.

You must check the evidence is correct and genuine.

Evidence of specific qualifications needed in some trades will strengthen the credibility of the application, but it is the applicant's responsibility alone to make sure they meet any legal requirements.

For example, self-employed workers in information technology (IT) trades and accountants may choose not to register with an appropriate professional body, even though this would strengthen the credibility of an application to establish in business.

Mandatory qualifications

Where an applicant is wishing to start a business it may not be possible for them to have acquired all the qualifications/licences they require in advance. In such circumstances, they should submit evidence that they have researched what is required and plan to obtain them in due course. Where the applicant is already running a business, you must see any mandatory professional qualifications before you make a decision on a case.

These might include

- Driving Licence
- Gas Safe Register
- Environmental Health Service Registration
- Gaming Licence
- Healthcare Professions Council
- Ofsted Registration
- Buildings and Electrical Safety Regulations
- Performing Rights Society
- Premises and Personal Licence for the Sale of Alcohol
- Security Industry Authority (SIA) Licence

Insufficient evidence

In cases where the applicant does not provide sufficient evidence of their previous experience and/or qualifications relevant to the application, you should ask them to provide further written evidence. This may take the form of employer references and certificates.

If the applicant is currently running a business but does not provide sufficient evidence of relevant experience and/or qualifications that suggests the business is not credible, they should be refused leave under paragraph 21 of the 1973 rules (HC510).

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Evidence of proficiency in English

This page tells you about how a person applying as a businessperson under the Turkish ECAA, proficiency in English can be used to assess their ability to establish in business or continue operating their business.

Fluency in English is not a requirement of the 1973 business provisions but should be taken into account as part of the overall assessment of the evidence provided.

If the applicant has little or no English you must consider this in the context of the proposed business, taking into account the other supporting evidence provided.

In some circumstances, common sense will tell you that it may be possible for the applicant to establish in business with little or no English. In other circumstances, not being able to speak good English may present severe difficulties. For example, it could extend the time taken to establish the business and slow the rate of growth of the business in subsequent years.

In cases where the applicant does not provide sufficient evidence of proficiency in English and this is relevant to the application, you must ask the applicant to provide further written evidence of their fluency. This may take the form of an appropriate qualification in English or a certificate of attendance from a college where they are studying English.

You must check that the evidence is correct and genuine.

Applications where you consider fluency in English to be important for the proposed business but the applicant does not provide sufficient evidence of this may suggest the business is not credible. This should be taken into consideration in the overall assessment of the application and where appropriate, you may consider refusing the application under paragraph 21 of the 1973 rules (HC510).

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Additional requirements if joining an existing business

This page tells you about what additional evidence must be provided if a person applying as a businessperson under the Turkish ECAA is intending to join an existing business.

Business accounts for the previous years

Applicants joining an existing business must provide business accounts (preferably audited) immediately prior to joining the existing business. This is to establish the financial position of the business and show that they will be joining a legitimate business that is able to support them and any dependants.

You must be satisfied that the:

- business is viable (not insolvent)
- applicant can bear their share of the debts or liabilities of the business
- proposed investment is proportional to their role in the business
- net profits of the business are sufficient to support the applicant and any dependants included in the application

Written statement of the terms on which the applicant is to enter the business

Applicants joining an existing business need to provide a written statement of the terms on which they will enter the business.

This should take the form of an agreement between the applicant and the current owner of the business detailing the terms and conditions that s/he will enter the business. This can include all the financial aspects of the partnership.

The following factors can be taken into account when assessing an applicant joining an existing business:

- the applicant is devoting their own funds or assets to the business
- they are making a financial investment in the business proportional to their role in the business
- they are taking their share of the profits of the business
- they are involved in strategic decision-making and long-term operational decisions
- they have responsibility for their share of the business liabilities

Evidence the applicant will be actively involved in running the business

Applicants joining an existing business must be actively involved in that business and not using the application as an attempt to secure leave for some other purpose.

You must be satisfied the evidence provided confirms the terms of the partnership agreement and the partnership agreement has a realistic chance of being fulfilled. The involvement should take up most of the applicant's working time.

Evidence there is a genuine need for the applicant's services and investment

Applicants joining an existing business need to show there is a genuine need for their services and investment. This could be demonstrated by showing how the proposed investment will be used to grow and increase the net profit of the business.

You must be satisfied the proposed investment is backed up by legal documents, such as the partnership agreement, and the applicant must show they will be fully integrated into the business and have an active involvement in the business.

Articles of Memorandum or a Certificate of Incorporation

Applicants joining an existing limited company must provide Articles of Memorandum or a Certificate of Incorporation.

You must check the evidence is correct and genuine using the [Companies House Direct website](#). This will show all company appointments and resignations and indicate if the company is still active.

Applications to join an existing business where business accounts have not been provided, or are incomplete, must be refused under paragraph 21 of HC510. This is because insufficient evidence has been provided to establish the current financial position of the business that they will be joining.

Applications to join an existing business where the applicant is not named on the partnership agreement, or the partnership agreement does not satisfactorily outline how they will be actively involved in running the business, must be refused under paragraph 21 of HC510.

This is because insufficient evidence has been provided to show the terms on which they will enter the business.

Where the applicant intends to join an existing business, accounts (preferably audited) must be produced to show its financial position together with the terms on which they are to enter into it. Whilst not actual requirements as laid out under paragraph 21 of HC510, you must take the following points into consideration:

- the applicant is joining an existing business which is already operating with a good profit
- there is no evidence to show the applicant's involvement will help to grow the business

This is because insufficient evidence has been provided to show there is a genuine need for their services and investment.

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[Refusal wording: where an applicant is joining an existing business](#)

Related external links

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[Starting up in business](#)

[Companies House](#)

Requirements to continue operating their business

This page tells you about deciding whether a Turkish national meets the requirements for an 'appropriate extension of stay' to continue operating their business under the Turkish ECAA.

Under paragraph 21 of the after entry 1973 business rules, Turkish nationals who have already been granted a period of leave to remain in the UK as a businessperson under the 1973 business rules are entitled to apply for an extension of stay to continue operating their business.

The applicant meets all the requirements

Whether the applicant can be granted permission to continue operating their business depends on a number of factors, including evidence as set out in the minimum requirements of the 1973 business rules.

You must be satisfied that:

- they have devoted assets of their own to the business
- they are able to bear their share of the liabilities the business may incur
- their part in the business does not amount to disguised employment
- their share of the profits of the business will be sufficient to support themselves and any dependants without recourse to employment or public funds

Applicants who have already been granted a period of leave to remain in the UK as a businessperson under the 1973 business rules may be granted an 'appropriate extension' to continue operating their business under the 1973 business rules. This should normally be for 3 years under code 2 conditions. This is unless you have doubts. In these circumstances, you should grant 12 months (see below).

You must refuse applications that fail to meet the requirements of the 1973 business provisions as set out in paragraph 21 of the 1973 rules (HC510).

Granting an extension for a further 12 months

If you have any doubts about refusing an application outright, you may decide, based on the merits of the application and the relevant circumstances, it is appropriate to grant an extension of stay for a further 12 months on code 2 conditions rather than a grant for the full 3 years.

Relevant circumstances can include:

- the business is established but has experienced difficulties during the initial 12 months of operating and its ongoing success is still to be proven

- the business is producing losses or only marginal profits while it is being set up
- the applicant is unable to provide business accounts but only submits bank statements instead

The applicant would need to apply again for a further extension at the end of that period.

You must refuse applications that fail to meet the requirements of the 1973 business provisions as set out in paragraph 21 of the 1973 rules (HC510).

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Dependent partners

This page tells you about which partners can join a person applying as a businessperson under the Turkish ECAA and the requirements they must meet to qualify for leave under the Immigration Rules.

If the applicant is coming to the UK with someone who has valid leave to remain as a Turkish ECAA businessperson, or a person who at the same time is being granted entry clearance, leave to enter or leave to remain as a Turkish ECAA businessperson they must be either the:

- dependent spouse
- civil partner
- unmarried partner or same-sex partner

Para 41 of HC510 states 'The family should be regarded as consisting of the person's wife, their children under 21, their other dependent children, and their dependants.' Reference to 'wife' should be treated as including husband, civil partner or unmarried or partner.

The dependent partner must not:

- fall for refusal under the general grounds under paragraph 4 in light of their character, conduct or associations
- represent a danger to national security
- be an illegal entrant

Entry clearance, leave to enter or leave to remain

You must be satisfied that:

- the marriage or civil partnership, or relationship similar to marriage or civil partnership, is subsisting at the time the application is made
- the applicant does not intend to stay in the UK beyond any period of leave granted to the ECAA businessperson
- the business is generating sufficient profits to support the applicant and any other dependants

Unmarried partners will also need to prove:

- any previous marriage, civil partnership or similar partnership by the applicant or the Turkish ECAA businessperson with another person has permanently broken down
- the applicant and the Turkish ECAA businessperson are not so closely related that they would be stopped from marrying each other in the UK
- the applicant and the Turkish ECAA businessperson have been in an unmarried relationship together that will normally have lasted at least 2 years

You must always consider the individual circumstances of the application. For example, there may be instances when the couple have not been in a relationship for 2 years or more, but you are still satisfied that the relationship is subsisting and durable. This may be, for example, where the couple have a child together and a birth certificate showing shared parentage has been provided with evidence of living together.

Switching

If a partner wishes to apply as the dependant of a Turkish business person, switching will be allowed if the partner is in the UK lawfully in any category of the Immigration Rules.

'Switching' will not be allowed and the application must be refused if the applicant wishing to join the Turkish business person is in the UK:

- on temporary admission
- on temporary release
- illegally

Granting or refusing leave to remain

If the dependent partner meets all the above requirements you must grant leave in line with the Turkish ECAA partner on code 1 conditions.

Indefinite leave to remain

Under the provisions of the Turkish Business ECAA there is no route to settlement for Turkish ECAA business persons or their dependants. This was confirmed in *Aydogdu v SSHD* [JR/15737/2015] and *Bektas Alagoz* [2017] CSOH 27. While the implications of the judgment were being examined, settlement applications submitted before 16 March 2018 continue to be processed in line with the guidance below.

ECAA settlement cases submitted before 16 March 2018

Where the dependant of a Turkish ECAA Business person submits an application for ILR before **16 March 2018** this should be assessed in line with the criteria below.

You must be satisfied that:

- the applicant does not fall for refusal under the general grounds and is not an illegal entrant
- the applicant is the spouse or civil partner, unmarried partner or same-sex partner of a Turkish ECAA businessperson who, at the same time, is being granted indefinite leave to remain as a Turkish ECAA businessperson
- the applicant must have, or have last been granted, leave as the partner of the Turkish ECAA businessperson who is being granted indefinite leave to remain

- where the applicant is a spouse, civil partner, same-sex or unmarried partner, they must have been living in the UK with the Turkish ECAA business person for a period of at least 2 years
- the marriage or civil partnership, or relationship similar to marriage or civil partnership, must be subsisting at the time the application is made
- the applicant and the Turkish ECAA businessperson normally intend to live permanently with the other as their spouse or civil partner, unmarried or same-sex partner

Granting or refusing indefinite leave to remain

If the dependent partner meets all the above requirements you must grant indefinite leave in line with the Turkish ECAA partner.

Dependent partners must be in the UK to apply, and must have previously been granted leave as the dependant of a Turkish ECAA businessperson.

Supporting documents required

Documentary evidence might include:

- the applicant's current passport
- the applicant's police registration certificate if they have to register with the police
- documents confirming the applicant's relationship to the Turkish ECAA sponsor such as a full marriage certificate or a 'Livret de Famille'
- documents confirming the applicant and the Turkish ECAA sponsor have been living together for at least 2 years, such as letters from official sources and utility bills addressed jointly to the applicant and the Turkish ECAA sponsor or separately to them at the same address

You must check that the documents are correct and genuine.

ECAA settlement cases submitted on or after 16 March 2018

In line with the Aydogdu and Alagoz judgments above, there is no route for the granting of ILR under the provisions of the Turkish ECAA.

Application forms

The applicant and any dependants must be included on form ECAA2.

Form ECAA3 is used if dependants are applying separately for an extension of stay in line with someone who has already been granted leave as a Turkish ECAA businessperson.

If the ECAA Turkish businessperson has already been granted indefinite leave to remain, the applicant is no longer eligible to apply for leave under the 1973 business provisions.

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Dependent children

This page tells you about the requirements for dependent children of a person applying as a businessperson under the Turkish ECAA to qualify for leave.

The applicant must be the dependent child of a person who has valid leave to remain as a Turkish ECAA businessperson, or a person who at the same time is being granted entry clearance, leave to enter or leave to remain as a Turkish ECAA businessperson.

The dependent child must be under the age of 21 on the date the application is made. The dependent child must not:

- fall for refusal under the general grounds because of their character, conduct or associations
- represent a danger to national security
- be an illegal entrant

Entry clearance, leave to enter or leave to remain

You must be satisfied that:

- the applicant is not married or in a civil partnership, has not formed an independent family unit, and is not leading an independent life
- the applicant does not intend to stay in the UK beyond the period of leave granted to the Turkish ECAA businessperson parent
- both of the applicant's parents are either lawfully in the UK, or being granted entry clearance or leave to remain at the same time as the applicant
- there are serious or compelling family or other considerations which would make refusal undesirable and suitable arrangements have been made for the applicant's care
- the business is generating sufficient profits to support the applicant and any other dependants

Granting or refusing leave to remain

If the child meets all the above requirements you must grant leave in line with the Turkish ECAA parent on code 1 conditions.

Children must be in the UK to apply, but they do not need to have entered the UK with valid entry clearance as the dependant of a Turkish ECAA businessperson to join their parents. Children admitted as visitors may apply.

Indefinite leave to remain (ILR)

Under the provisions of the Turkish Business ECAA there is no route to settlement for Turkish ECAA business persons or their dependants. This was confirmed in *Aydogdu v SSHD* [JR/15737/2015] and *Bektas Alagoz* [2017] CSOH 27. While the Page 73 of 97 **Published for Home Office staff on 18 July 2019**

implications of the judgment were being examined, settlement applications submitted before 16 March 2018 continue to be processed in line with the guidance below.

ECAA settlement cases submitted before 16 March 2018

Where the dependant of a Turkish ECAA Business person submits an application for ILR before **16 March 2018** this should be assessed in line with the criteria below.

You must be satisfied that:

- the applicant does not fall for refusal under the general grounds and is not an illegal entrant
- the applicant is the child of a parent who, at the same time, is being granted ILR as a Turkish ECAA businessperson
- the applicant has, or has last been granted, leave as the child of the Turkish ECAA businessperson who is being granted ILR
- the applicant is not married or in a civil partnership, has not formed an independent family unit and is not leading an independent life
- both of the applicant's parents are lawfully in the UK, or are being granted leave at the same time as the applicant

Granting or refusing ILR

If the child meets all the above requirements you must grant ILR in line with the Turkish ECAA parent.

Applicants (children) must be in the UK to apply, and must have previously been granted leave as the dependant of a Turkish ECAA businessperson.

Children born in the UK who have never held ECAA leave and apply for ILR.

Parents should seek legal advice as the best means of gaining immigration status for their child.

Safeguarding and promoting the welfare of children

If one of the child's parents is not included in the application, or a new child is included or an old child is missing from an application, you must examine the case history carefully and follow the safeguarding children guidance.

You must be satisfied that:

- the Turkish ECAA businessperson is the applicant's sole surviving parent
- the Turkish ECAA businessperson parent has and has had sole responsibility for the applicant's upbringing
- the absent natural parent has provided a signed declaration stating their agreement to the applicant living with the Turkish ECAA businessperson in the

UK or other official documents to explain why such a letter cannot be provided (the address of the absent parent should be given on the application form if this is appropriate)

- there are most exceptional, serious or compelling family or other considerations which would make exclusion of the child undesirable and suitable arrangements have been made for the child's care

Supporting documents required

Documentary evidence might include:

- the applicant's current passport (and police registration certificate if required)
- documents confirming the applicant's relationship to the Turkish ECAA sponsor such as a full birth certificate or a 'Livret de Famille'
- documents confirming that the Turkish ECAA sponsor has and has had sole responsibility for the applicant's upbringing such as a death certificate, divorce certificate, custody certificate, or adoption certificate
- signed letter from an absent parent

You must check that the documents are correct and genuine.

ECAA settlement cases submitted on or after 16 March 2018

In line with the Aydogdu and Alagoz judgments, there is no route for the granting of ILR under the provisions of the Turkish ECAA.

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Refusal wordings

This page tells you about suggested refusal notice wording to use when you are refusing a person who has applied for entry clearance, leave to enter, leave to remain or indefinite leave to remain as a businessperson under the Turkish ECAA.

The refusal wordings set out:

- the specific reasons for refusal based on the requirements of the 1973 business provisions, followed by
- the suggested wording for refusal notices describing why the requirements have not been met

You must always add to the refusal wording so that it accurately explains why the application falls for refusal against the relevant paragraphs of the 1973 business provisions. The wording must explain exactly which requirements have not been met and why they have not been met due to the evidence provided.

If none of the examples are relevant, you must draft other wording that explains which requirements have not been met and why they have not been met.

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Refusal wordings: entry clearance

This page tells you about suggested refusal wordings for refusal notices on general reasons when you refuse a person who has applied for entry clearance as a businessperson under the Turkish ECAA.

This is under paragraphs 31, 32, 68 and 69 of HC509 (on entry) of the business provisions in force in 1973.

'You have applied for entry clearance as a businessperson under the Turkey – European Community Association Agreement (ECAA). This contains a 'standstill clause' which means that the United Kingdom may not impose conditions for business applicants less favourable than were in force when the Agreement came into force for the United Kingdom in 1973. I have therefore assessed your application in accordance with the on entry business provisions in force in 1973, namely the provisions in paragraphs 31, 32, 68 and 69 of HC509. However, your application is refused because'

Paragraph number	Reason	Suggested wording
69 of HC509	Your exclusion is conducive to the public good	<ul style="list-style-type: none">• In light of [insert reasons] your exclusion from the United Kingdom is conducive to the public good•
68 of HC509	You are subject to a deportation order	<ul style="list-style-type: none">• On [insert] you were made subject to a deportation order. There is no evidence that this order has been cancelled
31 of HC509	You have failed to meet the ECAA requirements for someone seeking entry clearance to join an existing business	<ul style="list-style-type: none">• you have failed to show you are bringing money of your own to put into the business• you have failed to show you will be able to bear your share of the business's liabilities• you have failed to show the share of the profits will be sufficient to support you and your dependants• you have failed to show you will be actively concerned in the running of the business• you have failed to show there is a genuine need for your services and

Paragraph number	Reason	Suggested wording
		<p>investment</p> <ul style="list-style-type: none"> • you have failed to provide the accounts of the business for previous years
32 of HC509	You have failed to meet the ECAA requirements for someone seeking entry clearance to set up a business on their own account	<ul style="list-style-type: none"> • you have failed to show you are bringing into the country sufficient funds to establish a business • you have failed to show the business can realistically support you and any dependants without the need to take employment
68 of HC509	You are subject to a deportation order	<ul style="list-style-type: none"> • you are currently the subject of a deportation order signed on [enter date]

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Refusal wording: leave to enter

This page tells you about suggested wordings for when you refuse a Turkish ECAA businessperson who has applied for leave to enter the UK under paragraph 12 of HC509 (the business rules in force in 1973).

'You have applied for leave to enter the United Kingdom in order to establish yourself in business under the Turkey – European Community Association Agreement (ECAA). This contains a 'standstill clause' which means that the United Kingdom may not impose conditions for business applicants less favourable than were in force when the agreement came into force for the UK in 1973. I have therefore assessed your application in accordance with the on entry business provisions in force in 1973. However, your application is refused because'

Paragraph number	Reason	Suggested wording
12(a) of HC509	False representations were employed and/or material facts were not disclosed whether or not to the holder's knowledge for the purpose of obtaining entry clearance	<ul style="list-style-type: none">• your entry clearance issued on [date] was obtained on the basis of false representations and/or false documents submitted. I am satisfied that the [statement/documents] you submitted were false because [state reasons]• you failed to disclose the following facts [state facts] in your application. I am satisfied that these facts were material to the application because [state reasons]
12(b) of HC509	A change in circumstances since entry clearance was issued has removed the basis of the holder's claim to admission	<ul style="list-style-type: none">• you were given leave to enter the United Kingdom on [date] but I am satisfied that there has been such a change in circumstances in your case since the leave was granted that it should be cancelled. I therefore cancel your leave to enter/remain• in view of the fact that [state facts] since the leave was granted the basis of your claim to admission has been removed

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Refusal wording: fraudulent and abusive practice

This page tells you about suggested wordings for refusal notices when you refuse a person who has applied for leave to remain as a Turkish ECAA businessperson and there is evidence of fraudulent and abusive practice.

All refusals on this basis are under paragraph 4 of HC510, (the business provisions in force in 1973).

You must use the following introductory paragraph in all formal notices to applicants or their representatives, followed by the appropriate wording in the table below.

‘You have applied for leave to remain in the United Kingdom in order to establish a business (continue operating your business) under the Turkey – European Community Association Agreement (ECAA). This contains a ‘standstill clause’ which means that the United Kingdom may not impose conditions for business applicants less favourable than were in force when the United Kingdom became bound by the agreement in 1973. Your application has therefore been assessed in accordance with the after entry business provisions in force in 1973 (HC510). You are referred to paragraph 4 of HC510, which states:

‘In deciding these matters account is to be taken of all the relevant facts; the fact that the applicant satisfies the formal requirements of these rules for stay, or further stay, in the proposed capacity is not conclusive in his favour. It will, for example, be relevant whether the person has observed the time limit and conditions subject to which he was admitted; whether in the light of his character, conduct or associations it is undesirable to permit him to remain; whether he represents a danger to national security; or whether, if allowed to remain for the period for which he wishes to stay, he might not be returnable to another country.’

Further to the highlighted section of paragraph 4 your application is refused because you have breached immigration law in the following regard’

Reason	Suggested wordings
It would be undesirable to permit you to remain in the United Kingdom	<ul style="list-style-type: none">• it would be undesirable to permit you to remain in the United Kingdom in light of your conduct, character or associations• your exclusion from the United Kingdom is conducive to the public good• you represent a danger to national security• you were convicted for [type of offence, date convicted, court, sentence]
You previously breached the United Kingdom’s Immigration Rules	you have been served with IS151A on [date] as an illegal entrant or person liable to administrative removal

Reason	Suggested wordings
You have sought or obtained leave by deception	you have sought leave by deception as a [category] in the following regard [give details of the deception used]
You have overstayed previous leave	you have made your application having overstayed your previous leave by [xxx] months. Your previous leave to remain expired on dd/mm/yyyy but you submitted your application for leave to remain as a Turkish ECAA businessperson on dd/mm/yyyy
You have failed to comply with a condition of your previous leave	you have failed to comply with the conditions attached to the grant of your leave to remain
You have established in business in breach of a condition of your previous leave	you have established in business in breach of your conditions of leave as a [category] which did not permit you to engage in business
You have breached the conditions of your temporary admission to the UK	<ul style="list-style-type: none"> • you are in breach of your conditions of temporary admission whilst in the United Kingdom which did not permit you to engage in business • you have absconded while on temporary admission • you have been served with IS96 on [date] as an applicant with reporting restrictions while on temporary admission to the United Kingdom
You have sought to obtain refugee status by making an asylum claim that is discredited	you have sought to obtain refugee status by making an asylum claim that was refused and upheld on appeal and which has been found to be untrue by the Immigration Judge [appeal determination promulgated on date]
You have made false representations and/or failed to disclose material facts	in the course of making this application you have made false representations, [submitted false documents] or [failed to disclose material facts] in the following regard [give details of deception]
There is a material link between the current business proposal and previous fraudulent or abusive conduct	<ul style="list-style-type: none"> • in making a new business proposal it can be shown that previous fraudulent or abusive conduct has allowed the application to be made • you have used relevant experience while establishing in business as an illegal entrant in developing your current business proposal

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Refusal wording: leave to remain

This page tells you about suggested wordings for when you refuse a person who has applied for leave to remain or further leave to remain as a Turkish ECAA businessperson.

All refusals for the reasons outlined on this page are under paragraph 21 of HC510 (the business provisions in force in 1973).

There are additional requirements if the applicant is claiming to be joining an existing business.

You must use the following introductory paragraph in all formal notices to applicants or their representatives.

'You have applied for leave to remain in order to establish yourself in/continue operating your business under the Turkey – European Community Association Agreement (ECAA). This contains a 'standstill clause' which means that the United Kingdom may not impose conditions for business applicants less favourable than were in force when the agreement came into force for the UK in 1973. I have therefore assessed your application in accordance with the after entry business provisions in force in 1973. However, your application is refused because I am not satisfied that'

Reason	Suggested wordings
You do not genuinely wish to establish in business as proposed/you have not genuinely established in business as proposed	<ul style="list-style-type: none">• the documentation you have submitted does not reflect a business proposal with a realistic chance of success because [state reasons]• you are not named on the partnership agreement• the partnership agreement does not satisfactorily outline what your level of involvement in the business will be• the documentation which you have submitted does not include [state documents]. This documentation is considered to be essential evidence to show that you can run a business of this nature because [state reasons]• you claim to be establishing in business as [state facts] but you have not shown that you have the relevant [qualifications] [experience] which are considered essential to running such a business• your level of English is not sufficient to allow you to run your business with a realistic chance of success because [state reasons]
You will not be bringing into	<ul style="list-style-type: none">• your business proposal does not require any

Reason	Suggested wordings
<p>the country money of your own to establish in business as proposed/you have not devoted assets of your own to the business as proposed</p>	<p>investment</p> <ul style="list-style-type: none"> • you have not shown that you have sufficient funds to invest in the business • you have not shown that you have invested any money into the business • you have not shown that your money has been invested in the business in a way that will grow the profit and goodwill of the business because [state reasons] • you have shown that money has been invested in the business but this money does not represent your own assets because [state reasons] • you have devoted assets of your own to the business but do not have a controlling or equal interest in the business because [state reasons]
<p>You cannot bear your share of any liabilities that the business may incur/you cannot bear your share of any liabilities that the business has incurred</p>	<p>You have provided documents to show that your business carries with it significant debts or liabilities. However, insufficient evidence has been provided to show that you can bear your share of these liabilities because [state reasons]</p>
<p>Your share of the profits of your business will be insufficient to support you and any dependants/your share of the profits of your business are insufficient to support you and any dependants</p>	<ul style="list-style-type: none"> • your share of the net profit of your business was [£XXX] but your annual living costs were [£XXX] and you have not provided sufficient evidence to show that you can maintain and accommodate yourself and your dependants without recourse to employment or public funds • you claim that the net profit of your business was [£XXX] and your annual living costs were [£XXX] but you have not taken account of your loan repayments • you have not provided evidence to substantiate your living costs in the form of a tenancy agreement
<p>Your part in the business will amount to disguised employment/your part in the business does amount to disguised employment</p>	<ul style="list-style-type: none"> • on the basis of your proposed day to day involvement in the business, insufficient evidence has been provided to show that your part in the business will not amount to disguised employment • you claim to have established in business but insufficient evidence has been provided to show that your part in the running of the business does not amount to disguised employment

Reason	Suggested wordings
	<ul style="list-style-type: none"> • there are transactions on your bank account statements showing regular credits from [state facts] indicating paid employment • the contract you have submitted shows employment terms and conditions, for example contracted hours, holiday entitlement • the invoices you have provided do not generate the business turnover indicated in your business accounts and you have not provided an explanation for the discrepancy • you have provided wage slips from [state facts] showing that national insurance/tax has been paid as an employee
<p>You need to supplement your business activities by employment for which a work permit is required/you have supplemented your business activities by employment for which a work permit is required</p>	<ul style="list-style-type: none"> • you have not shown that your business will generate sufficient profits to support you and any dependants without recourse to paid employment or public funds • you have declared that you are in receipt of public funds
<p>There is not a genuine need for your services and investment/there was not a genuine need for your services and investment</p>	<ul style="list-style-type: none"> • from the evidence provided there are doubts about whether there is a genuine need for your services and investment as a [state facts] in the area near to where you live • there is evidence to show you will face fierce competition from others already providing this type of service in your area. A search conducted on yell.com reveals [state facts] services near your postal district • in your documentation you have listed your previous experience and qualifications as strengths, but the level of competition poses a real threat to the establishment of a successful and profitable business

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Refusal wording: where an applicant is joining an existing business

This page tells you about suggested refusal wordings that you may use if the applicant is claiming to be joining an existing business as a Turkish ECAA businessperson.

Refusals on this basis are under paragraph 21 of HC510 (the business provisions in force in 1973).

'However, your application is refused because I am not satisfied that'

Reason	Suggested wording
<p>You have not provided accounts that establish the financial position of the business that you will be joining</p>	<ul style="list-style-type: none"> • you have not provided business accounts for the business you claim to be joining. Without these accounts there is insufficient evidence to establish the current financial position of the business that you will be joining • the business accounts that you have provided relate to the financial years [state dates] and so do not indicate the current financial position of the business that you will be joining • the business accounts you have provided are incomplete because they do not take account of other items of expenditure that you have referred to elsewhere in your application. Without these figures it is not possible to establish the financial position of the business that you will be joining
<p>You have not provided a written statement of the terms on which you will enter the business</p>	<ul style="list-style-type: none"> • you have not provided any legal documents such as a partnership agreement or a written statement to show the terms on which you will be joining the business • you have not provided sufficient evidence to show the terms on which you will enter the business that you claim to be joining • you have not shown that you will be establishing in business by virtue of a legitimate involvement in the business that you will be joining
<p>You will not be actively concerned in the running of the business/you are not actively concerned in the running of the business</p>	<ul style="list-style-type: none"> • you have not provided any evidence in support of the business activities that you claim to be undertaking • the evidence that you have provided does not support the level of involvement that you claim

Reason	Suggested wording
	<p>you will have</p> <ul style="list-style-type: none"> • the content of the partnership you have provided does not show how you will be actively involved in running the business • you have failed to show that you will be fully integrated into the business and have an active involvement in the business • your involvement in the business does not amount to establishment in business because [state reasons]
<p>There is a not genuine need for your services and investment/there was not a genuine need for your services and investment</p>	<ul style="list-style-type: none"> • the nature of the business that you claim to be joining does not require the involvement of any more business partners • you are joining a business which is already profitable and you have not provided sufficient evidence to show there is a genuine need for your services and investment • you have failed to demonstrate how the proposed investment will be used to grow and increase the net profit of the business

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Refusal wording: indefinite leave to remain

This page tells you about suggested refusal wordings for when you refuse a person who has purported to apply for indefinite leave to remain as a Turkish ECAA A businessperson

Under the provisions of the Turkish Business ECAA there is no route to settlement for Turkish ECAA business persons or their dependants. This was confirmed in *Aydogdu v SSHD* [JR/15737/2015] and *Bektas Alagoz* [2017] CSOH 27. While the implications of the judgment were being examined, settlement applications submitted before 16 March 2018 continued to be processed. Caseworkers should note when the application was submitted and use the appropriate refusal wording as indicated below.

Cases submitted before 16 March 2018

Reason	Suggested wording
You are not still engaged in business in accordance with the requirements of the 1973 business provisions	<ul style="list-style-type: none">• you have not provided audited business accounts prepared by a qualified or chartered accountant for the past 12 months• you have not provided sufficient evidence of your business activities in the form of invoices and letters of recommendation for the past 12 months• your itemised bank statements for the past 12 months show that no income has been received from your business during that time• you have provided documents to show that your business carries with it significant debts /liabilities and insufficient evidence has been provided to show that you can bear your share of these liabilities• you were declared bankrupt on [date] and your business has ceased trading
You have not spent a continuous period of 4 years as a Turkish ECAA businessperson (including time spent as a Tier 1 Entrepreneur, Businessperson or an Innovator)	<ul style="list-style-type: none">• you have not provided audited business accounts prepared by a qualified or chartered accountant for the whole of the past four years• you have not provided sufficient evidence of your business activities in the form of invoices and letters of recommendation for the whole of the past 4 years• you have not provided substantive evidence in the form of original itemised bank statements for the whole of the past 4 years

Cases submitted on or after 16 March 2018

Reason	Suggested wording
<p data-bbox="188 322 636 389">There is no route to settlement under the Turkish ECAA</p> <p data-bbox="188 432 636 757">While such persons are not eligible for settlement under the ECAA, further periods of 3 years' leave should be granted to any applicant who has erroneously applied for Settlement -and meets the necessary ECAA requirements for an extension.</p>	<ul data-bbox="699 322 1407 685" style="list-style-type: none">• The recent cases of Aydogdu [JR/15737/2015] and Bektas Alagoz [2017] CSOH 27 have confirmed that the ECAA does not apply to Indefinite Leave to Remain and there is no ECAA route to make such an application. Any application for Indefinite Leave to Remain must be made in accordance with the current Immigration Rules and the relevant requirements of the Rules must be satisfied in all cases. <p data-bbox="735 725 1378 792">The following wording can be added where it is decided to grant 3 years of ECAA leave:</p> <ul data-bbox="699 837 1407 1021" style="list-style-type: none">• While you are not eligible for Indefinite Leave to Remain under the ECAA, in light of the fact that you continue to meet the relevant ECAA requirements, you will be granted further leave to remain for [3 years].

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Refusal wording: dependants

This page tells you about suggested wordings for when you refuse a person applying as a family member of a Turkish ECAA businessperson.

Refusing leave to enter or remain

Dependants of ECAA business persons wishing to enter or remain in the UK are considered under the 1973 Immigration Rules. You must use the following introductory paragraph in all formal notices to applicants or their representatives, followed by the appropriate wording in the table below.

'You have applied for leave to enter/leave to remain as the dependant of a Turkish EC Association Agreement (ECAA) businessperson. The 1973 rules allow for general considerations and relevant facts to be taken into consideration when assessing applications. However, your application is refused because'

Paragraph Number	Reason	Suggested wording
4 of HC510	You are not the spouse/civil partner/unmarried partner of a person who has valid leave to enter or remain as a Turkish ECAA businessperson	<ul style="list-style-type: none"> • you applied for leave to remain in the United Kingdom as the dependent spouse/civil partner/unmarried partner of [name] under the provisions of the Turkish EC Association Agreement but their application has been refused. In view of this I am not satisfied that you are the dependent spouse/civil partner/unmarried partner/same sex partner of a person with leave to remain in the UK under paragraph 4 of HC510. Your application is therefore being refused because you are being refused in line with the main applicant • you applied for leave to remain in the United Kingdom as the dependent spouse/civil partner/unmarried partner of [name] under the provisions of the Turkish EC Association Agreement but in view of the fact that [state reasons] I am not satisfied that your marriage/civil partnership/relationship is subsisting at the time of the application
4 of HC510	You are not the child of	You applied for leave to remain in the

Paragraph Number	Reason	Suggested wording
	a person who has valid leave to enter or remain as a Turkish ECAA businessperson	United Kingdom as the dependent child of [name] under the provisions of the Turkish EC Association Agreement but their application has been refused. In view of this I am not satisfied that you are the dependent child of a person with leave to remain in the UK under paragraph 4 of HC 510. Your application is therefore being refused because you are being refused in line with the main applicant.
	You have applied for further leave to remain as an ECAA dependent, but your sponsor already has ILR	You applied for leave to remain in the United Kingdom as the dependent spouse/civil partner/unmarried partner of [name] under the provisions of the Turkish EC Association Agreement, However, your sponsor already has settled status. Given that their status is no longer governed by whether or not they continue to be self established, you are not eligible for further leave in the ECAA category. You may wish to consider regularising your stay by applying for leave under the current Rules as the family member of a settled person.

Refusing indefinite leave to remain

Under the provisions of the Turkish Business ECAA there is no route to settlement for Turkish ECAA business persons or their dependants. This was confirmed in *Aydogdu v SSHD* [JR/15737/2015] and *Bektas Alagoz* [2017] CSOH 27. While the implications of the judgment were being examined, settlement applications submitted before 16 March 2018 continue to be processed. Caseworkers should note when the application was submitted and use the appropriate refusal wording as indicated in the table below.

Cases submitted before 16 March 2018

Paragraph Number	Reason	Suggested wording
Not applicable	One or more of the criteria have not been met.	In order to qualify for ILR, the following conditions need to be met: <ul style="list-style-type: none"> the applicant does not fall for refusal under the general grounds and is not an illegal entrant

Paragraph Number	Reason	Suggested wording
		<ul style="list-style-type: none"> the applicant is the spouse or civil partner or unmarried partner of a Turkish ECAA businessperson who, at the same time, is being granted indefinite leave to remain as a Turkish ECAA businessperson the applicant must have, or have last been granted, leave as the partner of the Turkish ECAA businessperson who is being granted indefinite leave to remain where the applicant is a spouse, civil partner same sex or unmarried partner, they must have been living in the UK with the Turkish ECAA business person for a period of at least 2 years the marriage or civil partnership, or relationship similar to marriage or civil partnership, must be subsisting at the time the application is made the applicant and the Turkish ECAA businessperson normally intend to live permanently with the other as their spouse, civil partner or unmarried partner <p>However, you have not met the following condition(s) [insert criteria not met] because [insert reasons]</p>
Not applicable	There is no route to settlement under the Turkish ECAA	

Cases submitted on or after 16 March 2018

Paragraph Number	Reason	Suggested Wording
Not applicable	There is no route to settlement under the Turkish ECAA While such persons are	The recent cases of Aydogdu [JR/15737/2015] and Bektas Alagoz [2017] CSOH 27 have confirmed that the ECAA does not

Paragraph Number	Reason	Suggested Wording
	not eligible for settlement under the ECAA, further periods of 3 years' leave should be granted to any applicant who has erroneously applied for Settlement -and meets the necessary ECAA requirements for an extension.	<p>apply to Indefinite Leave to Remain and there is no ECAA route to make such an application. Any application for Indefinite Leave to Remain must be made in accordance with the current Immigration Rules and the relevant requirements of the Rules must be satisfied in all cases</p> <p>The following wording can be added where it is decided to grant 3 years of ECAA leave:</p> <p>While you are not eligible for Indefinite Leave to Remain under the ECAA, in light of the fact that you continue to meet the relevant ECAA requirements, you can be granted an extension of further leave to remain for up to 3 years.</p>

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Examples of successful and unsuccessful businesses

This page tells you about examples of successful and unsuccessful applications under the Turkish ECAA.

The examples are intended only as a rough guide. Each application must be assessed on its own merits using the ECAA guidance.

Business	Successful	Unsuccessful
Fast food outlet or shop	Owens all or a significant amount of the business through investment of own funds, is the legally-registered owner, has final say on opening times, recruiting employees, sources of supplies, and so on.	Has paid money to the business owner but business was already operating successfully, no evidence of origin of funds, applicant has no controlling influence over the day to day running of the business.
Cleaning	Has invested in equipment, premises, transportation, has employees, simultaneously provides services for different clients.	Pays tax as a self-employed person but has bought only a small amount of equipment, works for one client at a time, is paid by the hour or week.
Business or IT consultancy	Has bought and uses own equipment, work consists of single projects at set prices for a variety of clients, evidence that applicant is looking to expand his business.	Is well qualified but works for one client on a long-term contract, is based in the client's office, uses client's equipment, work is determined by the day to day demands of the business.
Travel agency	Owens or rents business premises, meets all costs of running office from profits of business, organises travel directly with travel providers, has employees.	Claims to work specialising in certain types of client on a self-employed basis as part of a larger agency, works from the agency's office, uses their equipment and relies on their marketing and so on, has no previous experience in the industry.
Hairdressing	Owens or rents premises, has employees, making good profit, member of the National Hairdressing Federation as a salon owner.	Rents chair in hairdressers, pays tax on own takings but has no say over use of business premises and day to day running of the business.

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Administrative review

This page tells you about whether a person applying for leave as a businessperson under the Turkish ECAA is entitled to an administrative review or whether they have a right of appeal where their application is refused.

Applications made on or before 5 April 2015

If an application for leave to remain or indefinite leave to remain under the Turkish ECAA has been made on or before **5 April 2015**, applicants are entitled to appeal under section 82(1) of the Nationality, Immigration and Asylum Act 2002 if the 'immigration decision' attracts a right of appeal on one or more of the grounds listed in section 84 of the act. Whether an applicant has a right of appeal will depend on whether their application was submitted 'in' or 'out' of time.

Applications made on or after 6 April 2015

From **6 April 2015** amendments to the Nationality, Immigration and Asylum Act mean that ECAA applicants no longer have a right of appeal to a tribunal. Instead applicants can challenge a decision under the Turkish ECAA through an administrative review. Unlike the previous system, applicants will have a right to an administrative review irrespective of whether their application was 'in' or 'out' of time.

Decision letters

If you are making a Turkish ECAA decision on an ECAA application made on or after **6 April 2015**, you must use notice **0007**. This notice contains important information for applicants regarding the administrative review process.

Administrative reviews

Administrative reviews consider whether an 'eligible decision' is wrong because of a caseworking error and, if it is, correct that error. Administrative review is available for in-country applications for leave to remain or indefinite leave to remain under the Turkish ECAA category made on or after **6 April 2015**.

Requesting an administrative review

Applicants have 14 calendar days from the date the applicant receives the notice (7 calendar days if they are detained.) to apply for an administrative review. This is done by completing the [online form available on GOV.UK](#) and paying the £80 fee. Failure to meet these requirements will lead to the request being rejected. Applications made by letter or fax will not be accepted. For further information on how to apply to apply for an administrative review, the validation process and the fee (including fee waivers) see related links.

Omitted after this paragraph: 'Applicants have 14 calendar days from the date the applicant receives the notice (7 calendar days if they are detained) to apply for an administrative review. This is done by completing the online form available from the GOV.UK website and paying the £80 fee. Failure to meet these requirements will lead to the requires being rejected. Applications made by letter or fax will not be accepted. Further information on how to apply for an administrative review, the validation process and the fee (including fee waivers) see related links

The applicant's status while an administrative review is being undertaken

If the applicant has immigration leave and applies for administrative review within the time limit they will continue to have immigration leave until the administrative review is concluded, or they withdraw their application. Paragraph AR2.9 of appendix AR of the Immigration Rules states that the Home Office will not seek to remove an applicant from the UK while a valid application for administrative review is pending. This is to provide the applicant with the same protection from removal as if they had appealed the decision.

Official – sensitive: start of section

The information on this page has been removed as it is restricted for internal Home Office use.

Official – sensitive: end of section

Who should consider the request for administrative review

Where a request for an administrative review is made on an ECAA case, it will be carried out by the Administrative Review team. This is a separate team that is independent from the team who made the original decision. This is because a review must be considered by a different person to the one who made the original decision. This will make sure there is independence and transparency in the review process.

Related content

[Contents](#)

Related external links

[Administrative review guidance](#)

[Apply for an administrative review](#)

[Immigration Rules: Appendix AR](#)