Home Office

False representation

Version 2.0

This guidance is supplementary guidance relating to refusals on grounds of false representation under Part 9 of the Immigration Rules (the general grounds for refusal or GGfR) and the parallel provisions in Appendix Armed Forces, Appendix FM and Appendix V.

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About this guidance

This guidance is for caseworkers (including entry clearance officers and Border Force) considering a refusal on grounds of false representation.

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 Administrative Policy team.

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

Publication

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

- version **2.0**
- published for Home Office staff on **06 December 2019**

Changes from last version of this guidance

References to the template ‘minded to refuse’ letter added.

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General grounds for refusal

Definitions

This section explains the meaning of false representation.

The meaning of the word ‘false’ in the context of representations made as part of an application was discussed by the Court of Appeal in AA (Nigeria) [2010] EWCA Civ 773. That case concerned the interpretation of paragraph 322(1A) of the immigration rules:

> “where false representations have been made or false documents or information have been submitted (whether or not material to the application, and whether or not to the applicant’s knowledge), or material facts have not been disclosed, in relation to the application or in order to obtain documents from the Secretary of State or a third party required in support of the application.”

The Court concluded in AA (Nigeria) that before an application can be refused on grounds of false representations:

> “Dishonesty or deception is needed, albeit not necessarily that of the applicant, to render a “false representation” a mandatory ground for refusal.”

‘False representations’ means information provided, usually in support of an application, with the intention to deceive. You must not refuse an application on the basis that false representations have been made, or material facts not disclosed, unless you are satisfied that dishonesty or deception is involved.

An allegation of dishonesty or deception must not be made unless there is evidence to support the allegation, but false information can still result in a refusal under the rules where there is no evidence of dishonesty or deception.

If the information provided is incorrect but there is insufficient evidence of dishonesty or deception the application must be considered for refusal on eligibility grounds as such information will not show that the applicant meets the requirements of the rules. Further guidance is given in the mistakes section.

Where an application is refused on grounds of false representation, it should also be refused on eligibility grounds, if appropriate.

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The immigration rules on false representation

The rules in the table below provide for refusal on the basis of false representation.

Where an application is refused on grounds of false representation it should also be refused on eligibility grounds, if appropriate

False representation

Type of application	False representation by applicant or third party in the current application	False representation by applicant in a previous application
Entry clearance and leave to enter	320(7A)	320(7B)
Visitors	V3.6	V3.7 read with V3.9(d)
Leave to remain	322(1A)	322(2) or (2A)
Armed forces	AF 9(a)	
Family members (Appendix FM)	S-EC.2.2 S-LTR.2.2	S-LTR.4.2 or 4.3

Public policy grounds

Where there is clear evidence of dishonesty or deception but none of the paragraphs in the table above applies (if, for example, the applicant sought to deceive a Government Department other than the Home Office) and a refusal on eligibility grounds alone is not adequate to reflect the seriousness of the behaviour, it may be appropriate to refuse the application on eligibility and public policy grounds. The relevant rules are:

Type of application	Public policy rule
Entry clearance and leave to enter	320(19)
Visitors	V3.3
Leave to remain	322(5)
Armed forces	AF 8(g)
Family members (Appendix FM)	S-EC.1.5 S-LTR.1.6 S-ILR.1.8

In Balajigari v SSHD [2019] EWCA Civ 673, the Court of Appeal held that dishonest conduct was capable of coming within the terms of the public policy provision, subject to the guiding principle that the relevant conduct must be serious. The Court held that not all dishonesty is sufficiently serious to meet the threshold but did not accept that dishonest conduct would have to be criminal to meet the threshold. By way of example, the Court said it was very hard to see how deliberate and dishonest

submission of false earnings figures to a Government Department would not be sufficiently serious to meet the threshold.

In **Balajigari** the appellants had declared a different level of income to Her Majesty's Revenue and Customs (HMRC) for tax purposes than they provided to the Home Office for the purposes of meeting the requirements of the immigration rules. As it was unclear whether the alleged false representations were made to the Home Office or HMRC the false representation rules did not apply. Subject to the requirement that the dishonest conduct must be serious to rely on public policy grounds, other examples include, but are not limited to:

- fraudulently claiming benefits or otherwise defrauding the benefits system
- providing false details to obtain an official document, such as a driving licence or passport

Facilitating or participating in a sham marriage would also be likely to meet the threshold.

When considering using the public policy grounds you should therefore consider both whether there has been a false representation (i.e. you are satisfied that dishonesty or deception is involved) and whether the conduct is sufficiently serious. You must assess whether there was incorrect information and whether that was a false representation and what, if anything, was intended or gained as a result. For example, you should not refuse on grounds of public policy if a person has made a genuine mistake on an application form or was unaware that the false representation had been made for example (by a third party) or has merely claimed something to which they were not entitled without any dishonest intention.

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Considering false representation

This section explains how to consider false representation.

For information on document verification and refusal on grounds that a false document has been submitted, see the document verification guidance.

If false information is provided as part of an application, either orally or in writing, including deliberately withholding relevant information or submitting false documents, you must consider refusing entry or leave to remain on eligibility grounds and, if there is evidence of dishonesty or deception, on grounds of false representation.

It is important to be clear in the decision whether the false representation was made in relation to the current or a previous application, and by whom it was made, as that will determine what action should be taken.

Burden and standard of proof

The burden of proof is on the applicant to show that they meet the requirements of the Rules. However, if you allege false representation the burden of proof is on Home Office to show both:

- that the representations are not true
- there is dishonesty

Relevant evidence may include, for example, discrepancies in the information provided by the applicant at various times, discrepancies between that information and information available from other sources, such as other Government Departments, and intelligence reports on the veracity of documents submitted.

Allegations of dishonesty or deception are serious, with significant consequences for applicants and their families. The legal standard of proof is ‘balance of probabilities’, which means it is more likely than not that the applicant or a third party has deliberately and dishonestly made false representation, submitted false documents or information or failed to disclose material facts. It is not appropriate to refuse based on false representation simply because you are not satisfied that the applicant has given correct information. Even if the omission or incorrect information is capable of leading a caseworker to make the wrong decision, if you allege false representation you must be able to show, on the balance of probabilities, that there was a deliberate intention to deceive.

In certain circumstances the applicant must be informed of the allegation of false representation and given the chance to respond before a decision is made on the application. See the section on procedural fairness for more information.

Mistakes

You must consider whether an innocent mistake has been made. You must not refuse on grounds of false representation if it is likely that there has been an innocent mistake or because there are minor but immaterial mistakes, such as typographical errors, in the application: for example, an applicant has given an incorrect postcode or misspelt a name on their application form. It may still be right to refuse the application if the mistake means you are not satisfied that the requirements of the rules are met. For example, if the applicant has claimed an income of £40,000, but has provided evidence for £4,000, you may take the view that the higher figure is an innocent mistake but may still refuse the application if on the evidence provided the required income threshold under the rules is not met.

In entry clearance cases, you should refer any innocent mistakes to the entry clearance manager (ECM) if you intend to issue. You must update PROVISO to indicate why you considered it an innocent mistake rather than deception.

In considering whether an innocent mistake has been made, you should ask

- how easy would it be to make an innocent mistake
- how likely is it that the applicant was unaware of the issue – for example, are they aware the information has been provided or are they aware that the information is incorrect
- does the false information benefit the applicant
- is it contradicted by other answers on the visa application form, or by any information in any documents provided with the current or a previous application
- does any endorsement or stamp in the passport contradict any answer given
- has a new passport been presented, and if so why
- has this ‘innocent mistake’ been made on a previous application

The grounds in paragraphs 320(7A) and V3.6, although mandatory grounds for refusal, do not require refusal of those who make innocent mistakes in their applications.

Procedural fairness

The Court of Appeal in the case of Balajigari v SSHD [2019] EWCA Civ 673 found that in certain cases where the Secretary of State is considering refusing an application, or curtailing leave, on the basis of false representation, the applicant must be given an opportunity to address that allegation before a decision is made.

In these cases, you must provide a ‘Minded to Refuse notification’, which means simply that you must tell the applicant you are thinking of refusing the application based on false representation, set out exactly what the allegation is and make it clear that you are alleging dishonesty. You must also give the applicant the chance to respond to that allegation. You may give the Minded to Refuse notification and ask for any response either in a personal interview or by letter. The letter template is in the Document Generator (reference ICD.5299: Minded to refuse for false representations) and in Operational Policy Instruction (OPI) 887. You must then

consider, in the light of the response (if any is given), whether there is sufficient evidence that the applicant (or, if relevant, a third party) has been dishonest.

You must give the applicant a reasonable period in which to respond to the Minded to refuse notification sent by letter or, if the applicant states they want to provide documentary evidence to support an explanation given in an interview. What is reasonable will depend on the circumstances, but in most cases 14 calendar days will be sufficient.

The circumstances where you must tell the applicant that you are alleging dishonesty and give them an opportunity to respond are where both of the following apply:

1. The applicant may not necessarily know about the information you have considered or its significance, for example information obtained directly from another Government Department.

   Whether the applicant could reasonably be expected to have known about the issue in advance of your allegation will depend on the circumstances. For example, the applicant may have said they have never received public funds but the Department for Work and Pensions may provide information demonstrating receipt of public funds. Before you make a finding of dishonesty you should give the applicant the chance to explain the discrepancy. Or, you may find that a passport has been damaged in a way that suggests deliberate tampering. The applicant may be aware of the damage and have an innocent explanation, but it may not occur to them that an explanation is required unless you explain your concerns. On the other hand, you may have evidence from the country of nationality that the passport was never issued to the applicant, in which case the evidence is incontrovertible and there is no need to provide the applicant with the opportunity to explain in advance of your decision why they have produced a false passport.

2. The implications for an applicant of a finding of dishonesty are significant.

   The seriousness of the consequences for the applicant is a fact-sensitive issue but, for example, if the applicant is lawfully in the UK and is seeking settlement or further leave to remain and will have to leave the UK if refused, that is a serious consequence. Refusal will also expose the applicant to the compliant environment, because it will mean that they can no longer open a bank account, rent accommodation and so on. By contrast, it will rarely be the case that an application for entry clearance or leave to enter reaches the required level of seriousness, because in most such cases a refusal will not change the applicant's circumstances.

You should also tell the applicant that you are alleging dishonesty and give them an opportunity to respond if you are refusing on public policy grounds based on false representation.

See the guidance on public policy grounds for advice on cases in which the Home Office considers the applicant's conduct to be so serious that their presence in the UK is undesirable. You must consider all the circumstances of the case, weighing up

the false representations and other factors including any factors which may mean that the applicant's presence in the UK is not undesirable. That requires you to have given the applicant the opportunity to provide all relevant information.

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Exercising discretion

Where you are considering refusal under a discretionary provision for example, a ground on which the application should “normally” be refused, you should consider whether, in the particular circumstances of the case, the presumption of refusal is outweighed by factors in the applicant’s favour and it may be necessary to apply a minded to refuse process to gather the relevant information.

Where mitigating factors, including human rights, are raised in response to the Minded to Refuse notification

You must consider any response received to the allegation of dishonesty and decide whether that allegation is sustainable. Even if the applicant fails to provide an explanation, you must still support your allegation of deception with evidence. In the Court of Appeal commented

> “the Secretary of State must be satisfied that dishonesty has occurred, the standard of proof being the balance of probabilities but bearing in mind the serious nature of the allegation and the profound consequences which follow from such a finding of dishonesty.”

You must also consider any mitigating factors raised as to why, even if there were false representations, the person’s presence is not undesirable when their case is considered as a whole; in other words, whether there are positive factors (such as outstanding contributions to the community in the UK) that outweigh the dishonesty. If you find that, on balance, it would be undesirable to allow the applicant to remain in the UK, you must finally consider whether there are any exceptional reasons why the application should be granted.

If it is claimed that refusal is not appropriate because it would be a breach of human rights and the claim is sufficiently particularised you should treat that as a human rights claim. Guidance on what amounts to a human rights claim is available in Rights of appeal. Guidance on how to consider a human rights claim and how to grant leave in the event that the claim succeeds is available for family and private life cases and for medical and other cases.

If a human rights claim has been made and, having considered all the circumstances of the case, you decide refusal is appropriate there will be a right of appeal against the refusal of the human rights claim. The allegation of false representation will be able to be addressed at that appeal, so you must make it clear in the refusal letter whether you are refusing on grounds of false representation or on other grounds.

Where you are satisfied that an applicant for indefinite leave to remain (ILR) cannot be removed because of human rights grounds but would otherwise fall for refusal on grounds of false representation, it may be appropriate to refuse ILR but grant limited leave to remain on human rights grounds. Guidance on this can also be found in family and private life cases and medical and other cases.

When considering refusing on public policy grounds you have discretion to decide that, in all the circumstances of the case, leave should be granted notwithstanding the fact that the applicant's presence in the UK is undesirable. Such cases will be exceptional, but the possibility cannot be discounted.

If no human rights claim is made in response to the minded to refuse notification and you decide refusal is appropriate there will be a right of administrative review against the refusal, unless the application you are refusing is itself an application on human rights grounds (in which case see the guidance on Rights of appeal).

Refusing cases where there has been dishonesty

In the case of Balajigari v SSHD [2019] EWCA Civ 673, the Secretary of State was criticised for not being clear in a decision letter that there had been dishonesty. Where you make a finding of dishonesty or indicate that you are minded to refuse based on dishonesty, you must make it clear that this is your view. Stating that you have "doubts" or "concerns" is not sufficient. You must say that there has been dishonesty or deception.

False representation in a previous application

If the false representation was found to have been made by the applicant (not a third party) in relation to a previous application, a current application for entry clearance must be refused and a current application for leave to remain should normally be refused. Separate provisions apply to applications under Appendix V and Appendix FM. You must take care to apply the immigration rule that is relevant to your case. See the table of rules.

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