

April 05

IMMIGRATION DIRECTORATES' INSTRUCTIONS

CHAPTER 6 SECTION 2

PERSONS INTENDING TO ESTABLISH THEMSELVES UNDER ECAA (APPLIES TO NATIONALS FROM ROMANIA AND BULGARIA ONLY)

PLEASE NOTE: *The following wordings are examples – they do not constitute an exhaustive list of all possible formulæ*

ON ENTRY

“You have sought leave to enter the United Kingdom as a self-employed business person under the provisions of a European Community Association Agreement....”

No entry clearance – does not meet clear and manifest test

“... but you hold no valid entry clearance in this capacity. Your application has been examined to establish whether it clearly and manifestly meets the requirements of the immigration rules for entry in this capacity. On such an examination we are not satisfied that your application meets the required criteria” application in accordance

Paragraph 216 of HC395

No entry-clearance – breach of conditions

“... but you hold no valid entry clearance in this capacity. As you have breached the conditions of your temporary admission the clear and manifest test has not been applied.

Paragraph 216 of HC395

AFTER-ENTRY SWITCHING REFUSAL WORDINGS

LAWFUL APPLICATIONS

Following the recommendations made in the Sutton II report published in June 2004, ECAA guidance has been revised and rewritten. The clear and manifest test has been introduced for all lawful applications, where the applicant entered the UK without prior Entry Clearance in the ECAA category. If the applicant meets all the

requirements of the clear and manifest test the application may be granted. If they are not met it will fall for refusal using the following paragraphs.

Where the application is in time use refusal notice ICD2241. If the application is more than 10 working days out of time, or the applicant has no valid leave at the time of application use refusal notice ICD2242, and refer to the unlawful instructions.

The Entry Clearance refusal paragraph and clear and manifest paragraph will be used in **all lawful cases**.

“You have applied for leave to remain in the United Kingdom as a business person under the provisions of an EC Association Agreement...”

No entry-clearance – does not meet clear and manifest test

“...but the Secretary of State is not satisfied that you have entered the United Kingdom with a valid United Kingdom Entry Clearance as a person intending to establish themselves under the provisions of the EC Association Agreement. Your application has been examined as to whether it clearly and manifestly meets the other requirements of the Immigration Rules. On such an examination we are not satisfied that your application meets the required criteria.”

Paragraph 221 with reference to 217(i) of HC395 as amended.

UNLAWFUL APPLICATIONS

Following the recommendations made in the Sutton II report published in June 2004, ECAA guidance has been revised and rewritten. The clear and manifest test does not apply to unlawful applications, unless there may be a realistic claim under ECHR. IDI Chapter 6 Section 2, paragraph 5 of switching section has full guidance on proportionality. Where the applicant entered the UK without prior Entry Clearance in the ECAA category, and has acted unlawfully the application will fall to be refused using the following paragraphs.

If the application is in time use refusal notice ICD2241, if the application is more than 10 working days out of time, or the applicant has no valid leave at the time of application use refusal notice ICD2242.

The Entry Clearance refusal paragraph will be used in **ALL** cases then choose another from the list below according to the applicant’s circumstances.

Entry Clearance refusal – breach of conditions

“...but the Secretary of State is not satisfied that you have entered the United Kingdom with a valid United Kingdom Entry Clearance as a person intending to establish themselves under the provisions of the EC Association Agreement. As you

have breached your conditions of leave then the clear and manifest test will not be applied”

Paragraph 221 with reference to 217 (i) of HC 395

No entry clearance - overstayer

“...but the Secretary of State is not satisfied that you have entered the United Kingdom with a valid United Kingdom Entry Clearance as a person intending to establish themselves under the provisions of the EC Association Agreement. As you have overstayed your leave then the clear and manifest test has not been applied.

Paragraph 221 with reference to 217(i) of HC395 as amended

No entry clearance – illegal entrant

“...but the Secretary of State is not satisfied that you have entered the United Kingdom with a valid United Kingdom Entry Clearance as a person intending to establish themselves under the provisions of the EC Association Agreement. As you are an illegal entrant then the clear and manifest test has not been applied.

Paragraph 221 with reference to 217(i) of HC395 as amended

No entry clearance - 24 hour in transit visas.

“...but the Secretary of State is not satisfied that you have entered the United Kingdom with a valid United Kingdom Entry Clearance as a person intending to establish themselves under the provisions of the EC Association Agreement. As you have failed to comply with the conditions attached to your period of stay and have failed to honour the declaration made to the entry clearance officer as to the intended duration and purpose of your stay, the clear and manifest test has not been applied.

Paragraph 322(3) and 322(7) of HC395 as amended.

No entry clearance - Forged Stamps. (Refusal is on notice ICD 2242)

“...but the Secretary of State is not satisfied that you have entered the United Kingdom with a valid United Kingdom Entry Clearance as a person intending to establish themselves under the provisions of the EC Association Agreement. In view of the fact that there is a counterfeit stamp / endorsement on page (number) of your passport, the Secretary of State is satisfied that false representations have been made in order to obtain leave to remain in the UK.

Paragraph 322(2) of HC395 as amended

(This type of refusal will always be referred to a local enforcement office to be served on the applicant in person)

No entry clearance – No evidence of lawful entry

Issue NELE questionnaire if the applicant has not provided evidence of their entry into the UK. If no further evidence is provided then prepare the refusal on the NELE letter and refer to the local enforcement office to serve on the applicant in person.

AFTER ENTRY - FURTHER LEAVE TO REMAIN REFUSAL WORDINGS

“You have applied for leave to remain in the United Kingdom as a business person under the provisions of an EC Association Agreement...”

Failure to produce accounts prepared by a qualified accountant.

“...but the Secretary of State is not satisfied you can show the current financial position in the form of accounts for the business prepared by a qualified accountant.”

Paragraph 221 with reference to 217 (iv) and 219 (v)

Not established

“...but the Secretary of State is not satisfied that you can show that you have established yourself in business in the United Kingdom.”

Paragraph 221 with reference to 217 (ia)

Maintenance and accommodation

“...but the Secretary of State is not satisfied that you can show that your share of the profits of the business is sufficient to maintain and accommodate yourself (and your dependants) without recourse to employment (other than your work for the business) or to public funds.”

Paragraph 221 with reference to 217 (ii)

Disguised Employment

“...but the Secretary of State is not satisfied you can show that your part in the business does not amount to disguised employment”

Paragraph 221 with reference to 217 (iv) and 219 (iv)

AFTER-ENTRY - INDEFINITE LEAVE TO REMAIN REFUSAL WORDINGS

All refusal paragraphs of HC395 as amended

“You have applied for indefinite leave to remain in the United Kingdom as a self-employed business person under the provisions of an EC Association Agreement..”

Where it is found that the applicant was granted Further Leave to Remain erroneously due to not being the correct nationality to benefit from the ECAA provisions, then the ILR application will fall to be refused as follows;

“but...the Secretary of State is not satisfied that you can show you are a national of Bulgaria or Romania. You are therefore not one of the specified nationals to benefit from the EC Association Agreements for indefinite leave in this category.

Paragraph 223 with reference to 222(ii) and 219(i)

Where the applicant hasn't spent a continuous period of 4 years in the business category the ILR application will be refused as follows;

“...but the Secretary of State is not satisfied that you have spent a continuous period of 4 years in the United Kingdom in this capacity and are still so engaged.

Paragraph 223 with reference to 222(i)

Where the caseworker finds that the application falls for refusal due to the applicants business not meeting the requirements for indefinite leave to be granted, then the ILR application will fall to be refused as follows;

“but...the Secretary of State is not satisfied that you have met the requirements for running a business as laid down in the Immigration Rules Paragraphs 217 and 218 or 219.

Paragraph 223 with reference to 222 (ii)

Where the applicant has failed to submit accounts covering the first 3 years of trading and management accounts for the 4th year, the ILR application will be refused as follows;

“...but the Secretary of State is not satisfied that you can show the financial position of the business for the last 4 years in the form of accounts prepared by a qualified accountant.

Paragraph 223 with reference to 222(iii)

Where the applicant gained entry to or leave in the UK by way of a forged stamp or travel document, the ILR application will be refused as follows;

“but...in view of the fact that there is a counterfeit stamp / endorsement on page (number) of your passport, the Secretary of State is satisfied that false representations have been made in order to obtain leave to remain in the UK.

Paragraph 322(2) of HC395 as amended