

**From:** European Operational Policy Team  
**Subject:** Fraud and abuse in Turkish ECAA applications  
**Date:** 23rd September 2013  
**Issue number:** 06/2013

**Purpose of notice**

1. To provide caseworkers with information on how to deal with Turkish ECAA applications involving fraud and abuse.

**Background**

2. Previously the UK's position was that persons who have engaged in abusive or fraudulent conduct were denied the benefit of the standstill clause and therefore any application to enter or remain for the purpose of self-establishment was assessed under current Immigration Rules. This position was consistent with the Court of Justice of the European Union's (ECJ) findings in *Dari and Tum* (C-16/05).
3. However, the more recent cases of *Oguz* (C-186/10) and *KA (Turkey)* have clarified this position. *Oguz* establishes that just because there has been fraudulent or abusive conduct a case will not necessarily fall outside of the standstill clause. *KA (Turkey)* further established that a breach of conditions will not always amount to fraudulent or abusive conduct.
4. This means that:
  - Applicants whose cases involve fraud and abuse should not automatically be denied the benefits of the 'standstill clause'.
  - Just because an applicant has breached the conditions of their leave this should not automatically be regarded as fraudulent or abusive conduct when dealing with their application under the ECAA.
5. As a result, the approach which caseworkers should now take when assessing the consequences of an applicant's breach of conditions under paragraph 4, is that of a case-by-case basis, with each case being considered on its individual facts.
6. This notice provides caseworkers with details of how to assess cases where there is fraud and abuse.

## **Paragraph 4 of HC510**

7. Paragraph 4 of HC510 is as follows:

*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**

8. Following the judgment in *KA (Turkey)* where an applicant has breached immigration law, for example by working in breach of conditions or establishing a business without permission, this does not automatically mean that the case must be refused under paragraph 4 of HC510. Instead, assessment of any breach of immigration law must be carried out on an individual case-by-case basis.
9. While paragraph 4 indicates that caseworkers should use discretion when considering all the relevant facts of an application, applicants will not normally be allowed to benefit where:
  - they represent a danger to national security
  - it would be undesirable to permit them to remain in the UK in the light of their character, conduct or associations
  - there has been a breach of conditions

## **Factors to be considered**

10. When considering whether an application should be refused where there is a breach of immigration law, the following factors will be relevant:
  - applicants who have overstayed a previous period of leave;
  - applicants who have entered or sought to enter the UK illegally;
  - applicants who have sought or obtained leave by deception, including those who have made false representations or failed to disclose material facts in the application;
  - applicants who have breached their conditions of leave to enter or remain, including:
    - where the applicant commenced trading before the initial grant of leave and placed themselves in a position to meet the requirements of paragraph 21 in circumstances where they should not have been able to do so;

- where the applicant has breached their conditions of temporary admission or has absconded from temporary admission.
- applicants who have previously used fraudulent or abusive conduct;
- where there is a material link between the current business proposal and previous fraudulent and/or abusive conduct;
- applicants who have unspent criminal convictions.

### **Duration of notice**

11. A further policy notice and, if appropriate, guidance will be issued in due course. Until then, this notice will remain in force.

### **Enquiries**

12. Any policy enquiries on this Notice should be addressed to <REDACTED – section 40(2)> or to the European Operational Policy inbox  
[EuropeanOperational@ukba.gsi.gov.uk](mailto:EuropeanOperational@ukba.gsi.gov.uk)

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