From: European Operational Policy Team
Subject: Refusals of documentation on public policy or public security grounds
Date: 21st December 2011
Issue number: 19/2011

Purpose of Notice

1. This notice provides guidance to European caseworkers on refusing an EEA national or their direct family member a document on public policy or public security grounds.

Legal background

2. The power to revoke/refuse/deport an EEA national or their direct family member on public policy or public security grounds is provided by regulation 21 of the Immigration (European Economic Area) Regulations 2006 (“the Regulations”). The threshold to cross for decisions being made on public policy/security grounds is a high one and becomes more difficult to cross the greater the length of residence of the EEA national or their direct family member in the UK.

3. Additional consideration also needs to be given to the factors established in regulation 21(5).

4. Case law has also served to further limit/define the manner in which the public policy/security threshold is met.

5. Separate considerations apply to extended family members of EEA nationals as these persons do not come within the provisions of the Free Movement Directive until they are issued a document on this basis.

Current Arrangements

6. Colleagues within the Criminal Casework Directorate (CCD) currently use these powers to make decisions to deport where a person has crossed the deportation threshold. Cases are primarily referred to CCD by the police, prison and court service and will be flagged on CID where CCD have an interest. In cases where the deportation threshold is met, CCD will then go onto consider regulation 21(5) to ensure that the deportation is in accordance with EU law.
7. The policy on exercising our powers to refuse documentation on public policy and public security grounds is currently under review and guidance on this will be made available to caseworkers in the early part of 2012. In the interim, advice has been sought from Counsel which has confirmed that at least in circumstances where there is a deportation order in place, then refusal of a document under the Regulations on the grounds of public policy and public security can proceed as this does not represent a significant risk of legal challenge to the Agency because the right to reside is being denied as a consequence of the deportation being undertaken.

**Change to Current Practice**

8. Caseworkers should with immediate effect check CID in all cases to establish whether there is CCD interest. If there is such an interest, then confirmation should be obtained from CCD as to whether a deportation order is in place. If it is, then caseworkers can proceed to refuse on public policy or public security grounds. The test which is applied to determine whether a person should be refused documentation on public policy/public security grounds is the same as the test which must be applied to determine whether a person ought to be removed on those grounds. This means that where a deportation order is in place, we can be satisfied that these considerations have already been taken into account and that the decision to refuse/deport is legally compliant. In such instances, caseworkers should contact CCD to obtain a copy of the public policy consideration taken as part of the deportation order, and replicate this in the refusal letter when refusing documentation.

9. If a deportation order is not in place, but CCD have indicated that this is being pursued, then caseworkers should hold the case to enable a deportation order to be issued as long as this does not take the Agency beyond the relevant timescales as set out in the Regulations. If it does, or if CCD have indicated that they can not pursue a deportation order, then the caseworkers must consider whether the EEA national or their family member satisfies the requirements of the regulations in the normal way and must issue a document if appropriate. If deportation is thereafter effected, then any document previously issued will automatically be invalidated upon that person’s removal from the UK under regulation 21(1A).

10. If a case comes to the notice of European caseworkers which appears to meet the deportation threshold but there is no recorded CCD interest on CID, then caseworkers should contact CCD to make them aware of the circumstances of the case and to discuss whether a deportation order will be pursued.

11. To note: Refusals on public policy grounds where a deportation order is not in place or cannot be put into place, continue to remain suspended until further guidance is issued.

12. Any policy enquiries on this Notice should be addressed to <REDACTED UNDER SECTION 40(2) (PERSONAL INFORMAITON)>