

From: Free Movement Operational Policy Team

Subject: Disclosure of interviewer's comments (form ICV 4605) following a marriage interview.

Date: 13 January 2015

Issue number: 01/2015

Purpose of notice

1. This notice is to inform caseworkers of the Upper Tribunal's reported judgment in the case of *Miah (interviewer's comments: disclosure: fairness) [2014] UKUT 00515 (IAC)*, which considered whether comments or opinions captured by the interviewer during, or following, a marriage interview should be disclosed to an appellant as part of the appeal bundle.

Findings of the Court

2. In the case of *Miah*, the UT found that where the Secretary of State refuses to issue documentation on the basis that the marriage is one of convenience under regulation 2(1) of the Immigration (European Economic Area) Regulations 2006, as a matter of fairness the applicant must be given all relevant information that was used as a basis for the refusal decision. This includes any comments or opinions captured by the interviewer either during, or after the interview.
3. Rule 13(1) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 provides that the following must be filed with the tribunal when a Notice of Appeal is served:
 - (a) *the notice of the decision to which the Notice of Appeal relates and any other document served on the Appellant giving reasons for the decision;*
 - (b) *any –*
 - (i) *statement of evidence form completed by the Appellant; and*
 - (ii) *record of an interview with the Appellant,*
in relation to the decision being appealed;
 - (c) ***any other unpublished document which is referred to in a document mentioned in (a) or relied upon by the Respondent;***
and

(d) the notice of any other immigration decision made in relation to the Appellant in respect of which he has a right of appeal under section 82 of the 2002 Act.”

4. Form ICV 4605, and any other notes from a marriage interview which are material to the decision, come within point (c) above and **must** therefore be included in any appeal bundle as a matter of course
5. In addition, under rule 13(2), the Secretary of State must also file any additional documents required as a result of directions given by the Tribunal. All documents filed must also be served on the Appellant.
6. Caseworkers must be aware that in exceptional cases, disclosure of the ICV 4605 or other notes may not be appropriate. This may be, for example, to protect the identity of a third party (such as where allegations have been made against the appellant). In such circumstances, this must be brought to the attention of the Tribunal for a ruling and directions (via the Presenting Officer's Unit). If there is any doubt as to whether information should be disclosed or not, this should be referred to your senior caseworker in the first instance.
7. Any policy enquiries on this notice should be addressed to the free movement operational policy mailbox at EuropeanOperational@UKBA.gsi.gov.uk or by calling <Redacted – s. 40(2)> or <Redacted – s. 40(2)>.

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Head of Free Movement Operational Policy Team
13 January 2015