



UK Visas & Immigration

Freedom of Information
Central Correspondence Team
Customer Service Operations
PO Box 3468
Sheffield
S3 8WA

SK Channon

Email: [request-310637-
1f323078@whatdotheyknow.com](mailto:request-310637-1f323078@whatdotheyknow.com)

Email:
[FOIRequests@homeoffice.gsi.gov
.uk](mailto:FOIRequests@homeoffice.gsi.gov.uk)

www.gov.uk/ukvi

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17 March 2016

Dear Ms Channon

Thank you for your enquiry of 13 January in which you requested information on applications to extend Leave to Remain after entry to the UK using a married partner visa. Your request is being handled as a request for information under the Freedom of Information Act 2000. I apologise for the delay in replying.

We are able to provide you with the information as set out in the attached Annex.

If you are dissatisfied with this response you may request an independent internal review of our handling of your request by submitting a complaint within two months to the address below, quoting reference 38112. If you ask for an internal review, it would be helpful if you could say why you are dissatisfied with the response.

Information Access Team
Home Office
3rd Floor, Peel Building
2 Marsham Street
London SW1P 4DF
e-mail: info.access@homeoffice.gsi.gov.uk

As part of any internal review the Department's handling of your information request will be reassessed by staff not involved in providing you with this response. If you remain dissatisfied after this internal review, you would have a right of complaint to

the Information Commissioner as established by section 50 of the Freedom of Information Act.

Yours sincerely

J Harvey
Customer Service Operations

We value your feedback, please use the link below to access a brief anonymous survey to help us improve our service to you:

<http://www.homeofficesurveys.homeoffice.gov.uk/s/108105TAZNG>

Annex

Question 1

With regards to your current visa applications appeals process, what is the current average waiting time between application refusal and appeal decision?

Response

For the period 1 July 2015 to 31 December 2015, the average time in calendar days between the case outcome, and appeal first tier outcome for spouse/partner cases was 275 days.

Question 2

Should an applicant wish to withdraw an appeal to make a fresh application, would the previous refusal affect the new application?

Response

No. Each application is considered on its own merits taking account of the evidence provided. However, if a previous application was refused on the grounds of suitability issues for example previous deception or criminality, this may be relevant when considering the new application.

Question 3

In the case of a previous application refusal, would the premium service still be able to supply same day service, or would the case be deemed to 'complicated'?

Response

The time an application takes and the circumstances in which we can meet a same day service are dictated by whether we have all of the information necessary to satisfy the immigration rules relevant to the consideration of the application submitted.

Question 4

Should an applicant wish to withdraw an appeal and make a new application using the premium service, what is the process for ensuring the passport in question is returned in good time to be considered as part of premium application?

Response

To make a Premium Service application the applicant's passport must be available and they must not be subject to any removal proceedings. If the passport is not

available then a person will not be able to submit a premium service application because a decision would not be able to be made on the same day.

Furthermore, it is worthwhile mentioning that section 17 of the Asylum & Immigration (Treatment of Claimants etc) Act 2004 gives the power to retain documents, such as a passport, where the Secretary of State or an immigration officer suspects a migrant is liable to removal and the retention of the document may facilitate removal.

This applies if:

- The migrant is unlawfully present in the UK. For example, an overstayer or illegal entrant.
- The migrant has been refused asylum or humanitarian protection and has no other basis of stay in the UK.
- The migrant has been refused leave to remain whether or not they have a right of appeal in the UK (unless they have an existing period of leave, other than under 3C or 3D of the Immigration Act 1971).
- A decision under section 47 of the Immigration, Asylum and Nationality Act 2006 has been made.
- Leave to enter or remain has been curtailed with the result that the migrant has no outstanding leave.

Therefore, where a person is liable for removal we would not return their passport to them.

Question 5

Does the current waiting times, and subsequent detention of passport, violate any human rights laws?

Response

The human rights laws have been adopted by the UK by enacting the Human Rights Act 1998. We cannot see a breach of any of the Articles of the Human Rights Act 1998 by holding a migrant's passport while a decision is being made on an application they have submitted.

Before the application is decided, and if the migrant is not an overstayer of more than 28 days, it remains open to a migrant to request the return of their passport. If the migrant is an overstayer of more than 28 days then this person is liable to removal and as such there is a power to retain documents, such as a passport, which may facilitate removal under section 17 of the Asylum & Immigration (Treatment of Claimants etc) Act 2004. This is done to prevent documents being destroyed to delay a removal taking place. But even then a migrant can request the return of their passport for the purposes of leaving the United Kingdom and there is a process that a passport is returned to such a migrant.

Under the Human Rights Act 1998, Schedule 1, Part II, The First Protocol, Article 1, which concerns the Protection of property, it states as follows:

“Every national or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.”

A passport remains the property of the issuing authority and not the holder.

Question 6

If a visa extension application is refused, that decision is then appealed, the appeal is then withdrawn, a new application is then made, and the new visa application is refused, is there a further right to appeal?

Response

Yes. All refusals under the partner Immigration Rules in Appendix FM attract a right of appeal. Guidance on rights of appeal can be found at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/458403/Rights_of_appeal_guidance_v3_0.pdf

Question 7

Do Home office case workers who are processing applications have ability to request further evidentiary documentation? Who makes the decision whether to make such requests? Is it lawful to request this in some cases but not all, causing some applicants to be required to go through lengthy and expensive appeals processes?

Response

The Rules, guidance, applications forms and associated guidance set out clearly the validity requirements, specified evidence and supplementary evidence requirements. If the applicant fails to send information that is required to validate the application, it is rejected. If they fail to send evidence which is required to make a decision, the caseworker can decide the application on what they have before them. There is no requirement in policy for them to write out for anything at all. They sometimes write out for further information, if they feel it has been genuinely omitted by mistake, if for example the applicant refers to enclosed evidence in their application, but it is not enclosed and it would be pivotal in the decision to grant. The burden of proof sits with the applicant to provide all relevant and necessary information regarding the Human Rights claim and the Secretary of State may decide the case on the facts before her as of the date of application and/or decision.

Question 8

Is there any consideration currently for putting a mechanism in place that allows decisions of refusal, which are deemed to be clerical or administrative errors, where an applicant clearly meets all criteria but has misunderstood part of the application,

to be reconsidered in a different process than the lengthy and expensive appeals process?

Response

There are currently no plans to introduce such a mechanism. The decisions on most applications attract either a right of administrative review or a right of appeal.

An applicant who has a right of administrative review may use the administrative review process if they believe that an error was made in the consideration of their application. This process is set out here:

<https://www.gov.uk/ask-for-a-visa-administrative-review>

If the applicant has a right of appeal and believes that an error was made in the consideration of their application, they may challenge the decision by exercising their right of appeal. This process is set out here:

<https://www.gov.uk/immigration-asylum-tribunal>

An administrative review or appeal or is not generally a mechanism for applicants to correct deficiencies in their applications after they have received a decision. Administrative reviews and appeals consider whether the caseworker reached the correct decision based on the facts and evidence provided with the application.

There are limited circumstances in which those considering an administrative review may request further evidence. These are set out in the administrative review Immigration Rules and policy guidance, which are available on the www.gov.uk website.

There is also a reconsideration process which is available for the decisions on certain in-country applications, but only when there was no right of administrative review or appeal against the decision. Information about reconsiderations requests can be found at:

<https://www.gov.uk/visa-and-immigration-reconsideration-requests>

Question 9

Is the Home Office currently looking at any ways of reducing the current backlogs of appeals cases so applicants aren't waiting in some cases years with the threat of being torn from their families, unable to travel, or live their lives normally?

Response

HM Courts and Tribunal Service (HMCTS) manage the appeal system and are doing everything they can to avoid unnecessary delay in the Immigration & Asylum Tribunal, including putting in an additional 2,000 sitting days between December 2015 and the end of March 2016 across all hearing centres to make sure waiting times do not increase. HMCTS are keeping performance under close review and are confident there is sufficient capacity to deal with the number of appeals expected.

