

Immigration: Visa Applications and Refusals

By Vitalis Madanhi

Many people settled in the UK are perfectly entitled to invite relatives from their countries of origin. It is absolutely important for people to maintain family relationships and ties. This could be achieved by either visiting family back home or by inviting relatives to visit. In some deserving instances ask relatives to join them in the UK. Entry clearance officers have developed an apparently hostile attitude when handling some visa applications for our loved ones who too wish to maintain family ties. At times the Entry clearance officers are unjustifiably unpredictable to the detriment of the visa applicants.

In the majority of cases people make visa applications to come to the UK as visitors. Paragraph 41 of the Immigration rules outline the requirements which should be met by a person seeking a visitors' visa. The rules outline among other issues that:

- a person should genuinely seek entry as a visitor for a limited period of time as stated by him, not exceeding 6 months;
- intends to leave the UK at the end of the period of the visit as stated by him
- does not intend to take employment in the UK
- does not intend to produce goods or previous services within the UK including the selling of goods or services direct to members of the public
- does not intend to take a course of study
- will maintain and accommodate himself and any dependants adequately out of resources available to him without recourse to public funds or taking employment: or will, with any dependants, be maintained and accommodated adequately by relatives of friends and
- can meet the cost of the return or onward journey
- does not intend to receive private medical treatment during his visit

It is common for the visa entry clearance officers to refuse visa applicants on the basis of country conditions. This is an unfair basis to refuse an application for a visa for someone to come to the UK for a family visit. There is absolutely no justification to refuse a visa because of a report from the Secretary -General of the UN about what he called the disintegration of State institutions, collapse of the economy, collapse of health and education services and the outbreak of cholera. The mere fact that many people may require food aid cannot be a basis to refuse a visa for a person who has met the requirements to come to the UK as a family visitor or reunion. These issues can be challenged in court as they do not constitute a proper basis to refuse a visa to a deserving applicant.

It is also apparent for the entry clearance officers to refuse Zimbabweans on the basis of the conversion of currency from the Zimbabwean dollar to the use of foreign currency. Entry clearance officers tend to state that the move to hard currency charging for rents, utilities and school or university fees has also made it more difficult for ordinary Zimbabweans to survive economically. Often the entry clearance officers tend to state that this is not a reason to refuse your application but your country conditions. Basically they take the above points as a basis to state that an applicant would not return to one's country at the end of a visit. Courts have been clear and decisive in their consideration of such flimsy arguments refusing people entry clearance. Proper arguments and basic undertakings in court would make such a difference and many adverse decisions by entry clearance officers would be set aside by the courts. It is

advisable to seek help at all times so that adverse decisions are set aside. Be that as it may, there are other issues such as maintenance and accommodation which have to be fulfilled to assure the entry clearance officers that one would not resort to public funds.

The right to private and family life is sacrosanct. It is the family that we all depend on. This right is enshrined in article 8 of the European Convention on Human rights and has since been enshrined in the UK domestic legislation such as the Human rights act of 1998. The courts have clearly spelt out the importance of family life in various decisions which provide guidance in such matters. Entry clearance officers do not always consider any such cases solely because the cases would assist applicants. It becomes essential to assist applicants by consulting your solicitors so that relatives are not sidelined. Experience has shown that in the majority of refusals, those challenged through the courts would be overturned. After appealing, an entry clearance manager would also review the first decisions and at times they reverse their initial decisions. To that extent it is vital that advice be sought so that a comprehensive appeal could be noted and provide a good basis for review. If there is no positive review then a fully fledged appeal would have to be pursued.

It becomes unfair for a retired 65 year old relative to be asked to produce evidence that one has employable skills, qualifications and experience for such an elderly person to be allowed to visit family. Even the expectation of bank statements from such elderly people who do not even understand the conversion of currency from domestic currency to foreign currency is totally unacceptable. In any event many people had resorted not to put money in banks due to the economic decline in Zimbabwe in the recent past. Evidence of how they are maintained by relatives would suffice. Any such arguments can be taken to court and Judges could be reasonable when dealing with such issues.

There are also a number of parents who have had a torrid time to invite their children to join them in the UK. Such applications are normally dealt with in terms of paragraph 197 of HC395 as amended. The burden of proof is normally on the applicant and the sponsor. Parents should provide overwhelming evidence to confirm their responsibilities other than occasional financial responsibility for the appellant. It is also significant to highlight the extent of sole responsibility by providing more documents and to confirm that you normally make fundamental decisions on the child's school and well being. It is not wise to leave it until too late to invite the children. In other situations where one parent has passed away or where the parties have divorced then one may have to show that there are serious and compelling family considerations which make the exclusion of the other children or child undesirable. In the majority of cases entry clearance officers tend to refuse applications on that basis and such decisions are challenged in courts. It is absolutely important to ensure that people who consider inviting family or children to the UK should maintain contact at all times with the family which can be proved. It cannot be gain said that interference with family life is necessary and proportionate in order to maintain immigration control where it serves to separate families. Courts are quite sensitive on family issues.

It is even surprising that in some instances entry clearance officers have refused to issue visas for families seeking family reunion. If a person has been granted refugee status one is allowed to be reunited with one's family. Some entry clearance officers criticise the grant of refugee status itself where they deny a visa for any such families. This is incorrect and unacceptable. In such circumstances one should appeal to the courts. There would be need to establish the relationship between the parties and to confirm that any such relationship existed before the sponsor travelled to the UK. Unless you stand up for your family rights no one is likely to do so for you. It is significant to note that there are occasions when entry clearance visas or other

visas are refused without good basis. Some entry clearance officers may not be up to date with developments in the law and as such it becomes vital to seek legal help to protect interests of family members who may wish to visit or to join family in the UK. Some decisions are fairly arrived at and it is important to seek advice. In any event visa fees are quite high and as such it is important to be properly guided before abandoning a visa application.

Disclaimer: This article only provides general information and guidance on UK immigration law. The specific facts that apply to your matter may make the outcome different than would be anticipated by you. The writer will not accept any liability for any claims or inconvenience as a result of the use of this information.