

Information Paper for the LegCo Panel on Security

**Mechanism in respect of Application for Visit Visas and the
Handling of Appeals in the United Kingdom,
the United States and Australia**

Introduction

This paper provides information on the mechanism in respect of application for visit visas and the handling of appeals in the United Kingdom (U.K.), the United States (U.S.) and Australia.

Background

2. At the meeting of the LegCo Panel on Security held on 6 January 2000, Members noted the Administration's paper on its immigration policy and procedures in respect of applications for visit visas, and requested the Administration to provide information on the mechanism in respect of application for visit visas and the handling of appeals in other common law jurisdictions.

3. We have approached several major common law jurisdictions and are able to obtain the following information about the U.K., the U.S. and Australia.

United Kingdom

Application for Visit Visas

4. Under sections 1 and 2 of the U.K. Immigration Act 1971, anyone who is not a British citizen or a national of a Member State of the European Union exercising their European free movement rights needs to be granted leave to enter or leave to remain in order to enter into or remain in the U.K. lawfully.

5. By virtue of section 3(2) of the U.K. Immigration Act 1971, a set of rules is devised under the Immigration Rules to provide for the exercising of immigration control. Paragraphs 40 and 41 of the Immigration Rules set out the criteria adopted in processing applications for visitor visas.

6. Paragraph 41 of the Immigration Rules provides that persons seeking leave to enter the U.K. as visitors may be granted permission for entry if -

- (a) the applicant is genuinely seeking entry as a visitor for a limited period not exceeding 6 months and intends to leave the U.K. at the end of the period of the visit;
- (b) the applicant does not intend to take up employment in the U.K. or study at a maintained school;
- (c) the applicant does not intend to produce goods or provide service within the U.K., including the selling of goods or services direct to members of the public;
- (d) the applicant can meet the cost of the return or onward journey; and
- (e) the applicant will maintain and accommodate himself and any dependants adequately out of resources available to him without recourse to public funds or taking up employment; or will, with any dependants, be maintained and accommodated adequately by relatives or friends.

7. Visit visa applications may be submitted at the British visa posts. Entry clearance officers, who are responsible for approving visa applications, will decide whether a visa can be issued straightaway, or whether an interview is necessary. An application may be processed within the same day if a short interview is required. In other cases, the entry clearance officer may request an appointment for a long interview on a separate day.

Handling of Appeals

8. At present, there is no right of appeal in respect of visit visa applications. A written notice of refusal will be served and the reasons for the refusal must be explained to the applicant, who has the opportunity to comment. The Immigration and Asylum Act 1999 provided an exception by introducing the right of appeal for those intending to visit a close family member. Applicants are informed verbally that they have the right of appeal and are given explanatory notes on the process for appealing as well as the notice of refusal.

United States

Application for Visit Visas

9. Generally, a citizen of a foreign country who wishes to enter the U.S. must first obtain a visa, either a non-immigrant visa for temporary stay, or an immigrant visa for permanent residence. The "visitor" visa is a non-immigrant visa for persons desiring to enter the U.S. temporarily for business (B-1) or for pleasure or medical treatment (B-2). Persons planning to travel to the U.S. for a different purpose such as students, temporary workers, crewmen, journalists, etc must apply for a different visa in the appropriate category.

10. Applicants for visitor visas must show that they qualify under provisions of the Immigration and Nationality Act (INA). The presumption in the law is that every visitor visa applicant is an intending immigrant. Section 214(b) of the INA provides that "Every alien shall be presumed to be an immigrant until he establishes to the satisfaction of the consular officers at the time of application for admission, that he is entitled to non-immigrant visa status." Therefore, applicants for visitor visas must overcome this presumption by demonstrating that -

- (a) the purpose of their trip is to enter the U.S. for business, pleasure or medical treatment;
- (b) they plan to remain for a specific, limited period; and

- (c) they have a residence outside the U.S. as well as other binding ties which will insure their return abroad at the end of the visit.

Applicants must demonstrate that they are properly classifiable as visitors under the U.S. law. Evidence which shows the purpose of the trip, intent to depart the U.S., and arrangements made to cover the costs of the trip may be provided by the applicants for this purpose. There is no specification as to the exact form the evidence should take as applicants' circumstances vary greatly.

11. Applicants for visitor visas should generally apply at the American Embassies or Consulates with jurisdiction over their place of permanent residence. In most cases, a decision on the application will be made within the same day.

Handling of Appeals

12. Consular officers make decisions on visa applications. Persons whose visa applications are refused will be interviewed and given a "check-the-box" notice stating under which provision of the INA the application is refused. No further consideration can be given to these persons' visa applications unless they have new information or documentation to present. These persons may request the consular officer to reconsider the application, and will be interviewed by a different consular officer who will make an independent decision on the basis of the new evidence submitted. In the absence of new evidence, consular officers have no reasons to reverse the original decision.

13. A consular officer's decision may by regulation be reviewed by a supervisory consular officer and the Department of State. Such reviews are nonetheless restricted for the purpose of counseling individual consular officers (in respect of a review by supervisory consular officer) and for matters limited to interpretation of law but not determination of facts (in respect of a review by the Department of State). Neither of them can overturn a consular officer's decision.

Australia

Application for Visit Visas

14. Anyone who is not an Australian citizen needs a valid visa or Electronic Travel Authority (ETA) to enter and remain in Australia. The Migration Act 1958 (the Act) provides for different classes of visas, while the Migration Regulations 1994 (the Regulations) set out the criteria for obtaining different classes of visas.

15. Each application is considered on its own merits having regard to individual applicants' personal circumstances and the circumstances of the person supporting the visit. These include but are not limited to the following -

- (a) the level of personal, financial, employment and other commitments which may induce the applicant to return to his or her country of usual residence;
- (b) the credibility of the applicant in terms of character and conduct;
- (c) the history of compliance with or breach of immigration law by the applicant;
- (d) whether the applicant has adequate funds (including, where applicable, access to funds and assistance from person(s) nominated by the applicant) for his/her personal support during the period of the visit; and
- (e) whether the applicant is of good health, good character, and not subject to any restrictions on travel to Australia.

16. Visas are available from Australian visa offices such as Australian Embassies, High Commissions and Consulates. They are also available, in the ETA form, at participating travel agents, participating airlines, as well as Australia visa offices overseas. If the application is approved, a visa will be issued on the spot.

Handling of Appeals

17. Section 66 of the Act obliges the decision-maker to give a notice to the applicants regarding the refusal of visa applications. Under well-defined circumstances, the applicants may lodge an application for review to the Migration Review Tribunal, which may review and overturn the decision.

Security Bureau
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