



Family Visitor Appeals

Summary

1. The number of family visitor appeals has increased six fold, to nearly a thousand a week, since charges were abolished in 2002. The cost has reached approximately £1 million a week. The definition of family visitor is so wide that it could include as many as 120 relatives of a middle aged person in Britain. The definition should be tightened, charges re-imposed and bonds should be made an option (paragraph 11).

Introduction

2. The Immigration Appeals Act 1969 and the Immigration Act 1971 granted Rights of Appeal against a wide range of immigration decisions, including refusals to grant entry clearance. However, the Asylum and Immigration Appeals Act 1993 removed appeal rights for rejected visitors and short term students.

3. In October 2000, following disquiet that family members were being refused visit visas without appropriate remedy, the Right of Appeal against refusal of visitors visas for "family visitors" was re-instated under the Immigration and Asylum Act 1999. Fees were originally set at £500 for an oral hearing or £150 for an appeal without a hearing. In January 2001 these fees were reduced to £125 and £50 but in May 2002 the fees were abolished entirely.

Definition of a family visitor

4. For these purposes a family visitor is defined in Section 90 (1) of the Nationality, Immigration and Asylum Act 2002 as any of the following persons:

- (a) The applicant's spouse, father, mother, son, daughter, grandfather, grandmother, grandson, granddaughter, brother, sister, uncle, aunt, nephew, niece or first cousin. In these Regulations "first cousin" means, in relation to a person, the son or daughter of his uncle or aunt.)
- (b) the father, mother, brother or sister of the applicant's spouse;
- (c) the spouse of the applicants son or daughter;
- (d) the applicants stepfather, stepmother, stepson, stepdaughter, stepbrother or stepsister; or
- (e) a person with whom the applicant has lived as a member of an unmarried couple for at least two of the three years before the day on which his application for entry clearance was made.

5. This definition of family visitor is so widely drawn that in communities where the number of children per family is often four or five, one person could sponsor somewhere between 80 and 120 people under this scheme (Annex A). Furthermore, the provision for unmarried couples is particularly hard to verify and is therefore open to abuse.

6. A “family visitor” can generally appeal against refusal even if the applicant intends to do something else also during the trip. The legislation does not specify that visiting a family member has to be the sole, main or primary purpose of the trip. Nor does the sponsor have to be settled in the UK so someone still seeking asylum can sponsor a “family visitor”.

Statistics

7. The number of family visitor appeals has increased six fold, to nearly a thousand a week, since fees were abandoned as the following table shows^{1 2}:

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010*
Visitor Visa Appeals (thousands)	0.1	4.4	8.0	15.8	29.7	35.7	57.5	62.6	55.7	53.9	50.0

* 37,657 for the period January – September 2010. 50,000 obtained by extrapolating data to the end of the year.

8. Of particular concern is the rapid growth of applications from certain countries. In 2006 India, Pakistan and Nigeria produced over ¼ million applications - up by a factor of 16 over a period of four years. 175,000 were approved. The numbers have remained high; in 2010 applications from these three countries totalled 196,000 of which 151,000 were approved³. The worldwide total in 2010 was 423,000 of which 338,000 were approved⁴.

9. The number of people from these countries now settled in Britain has increased over this period but certainly not by enough to explain such an increase. There are several possible reasons for this massive increase;

- a) The definition of “family” is extremely wide, such as to include 50 - 120 relatives each.
- b) The government’s failure to remove those who stay beyond their visas must by now be well known.
- c) It must also be widely known to relatives overseas that embarkation controls are due to be introduced in a few years time.
- d) Talk of an amnesty for illegals can only encourage people to take a chance.
- e) Those who are refused can appeal at the British tax payers’ expense.

Cost

10. The costs of a family visitor visa appeal are borne wholly by the taxpayer. Most recent estimates suggest that the average cost of an Asylum and Immigration Tribunal Appeal is £927, a figure which is shared between the UK Border Agency and the Tribunals Service.⁵ On this basis, the cost of family visitor appeals in 2009 was £50 million. The applicant has nothing to lose and everything to gain by launching an appeal.

Government Proposals

11. The government have proposed a review of the full right of appeal for a failed application for a family visitor visa. It is proposed that, rather than have a right to a costly and time consuming appeal, failed applicants should simply re-apply with fresh evidence. It is further proposed that appeal rights should be maintained only on race discrimination and human rights grounds, however a consultation has requested suggestions for further grounds on which an appeal right should be maintained. The government also propose that family visitors should be prevented from switching into the family route as a dependant relative whilst in the UK.⁶

1 Data for 2000 to 2003 from Parliamentary Answer 5 July 2006 Col 333 –4 W

2 Data from 2004 to September 2010 Parliamentary Answer 20 January 2011 Col 972-4 W

3 FOI Request to the Home Office

4 FOI Request to the Home Office

5 Parliamentary Answer 20 January 2011 Col 972-4 W

6 UK Border Agency, Family Migration, A Consultation. URL: <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/consultations/family-migration/consultation.pdf?view=Binary>

Proposed Changes

12. The simplest solution would be to abolish the right of appeal, except on race or human rights grounds, as the government now propose. Failing that, we suggest that:

- (a) The definition of "family visitor" should be substantially tightened. In particular, uncles, aunts, nephews, nieces and first cousins should no longer be included. This would reduce the number of eligible relatives by up to 68.
- (b) Fees should be re-instated at the original levels. There is no reason why the British tax payer should pay the costs of appeals by foreign visitors.
- (c) The right to sponsor family visitors should be confined to British citizens. The relatives of others should apply as ordinary visitors.
- (d) An applicant should only qualify if the family visit is the main purpose of the visit.
- (e) There should be provision for sponsors to deposit a bond in cases of doubt if they so wished. The bond would be repaid as soon as the visitor reported back to the issuing Consulate.

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Annex A

Based on an average family size of 4 and 5 children per family a person resident in the UK could have up to 81 and 120 eligible family members in their country of origin, made up as follows:

	Based on 4 children	Based on 5 children	Notes
Parents	2	2	
Grandparents	4	4	
Uncles/Aunts	6	8	Each parent has 3 or 4 siblings
First cousins	24	40	4/5 children for each uncle/aunt
Brothers/sisters	3	4	
Nieces/Nephews	12	20	4/5 children of each brother/sister
Children	4	5	
Children's spouses	4	5	
Grandchildren	16	25	
Spouse	1	1	
Spouse's brother/sister	3	4	
Spouse's parents	2	2	
Total	81	120	