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HOLDS AN ENTRY CLEARANCE (WHICH DOES NOT HAVE EFFECT
AS LEAVE TO ENTER) (PARAGRAPH 321 HC 395)**

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- A. REFUSAL FORMULAE**

**CHAPTER 9
SECTION 3****REFUSAL OF LEAVE TO ENTER IN
RELATION TO A PERSON WHO HOLDS
AN ENTRY CLEARANCE****1. INTRODUCTION**

A visa national should normally be refused entry under Paragraph 320(5) if he does not hold a valid and current visa issued to him for the purpose for which he seeks entry. Similarly a non-visa national seeking entry in a category for which entry clearance is mandatory should normally be refused entry under the appropriate paragraph if he does not hold a valid entry clearance issued to him for that purpose.

Entry clearances which do not meet the criteria below do not confer leave to enter. A person presenting an entry clearance which does not have effect as leave to enter may be refused leave to enter in the circumstances described in Paragraph 321 of HC 395.

Under Article 3 of the Immigration (Leave to Enter and Remain) Order, for an entry clearance to have effect as leave to enter it must specify the purpose for which the holder wishes to enter the United Kingdom. It must also be endorsed with:

- the conditions to which it is subject; or
- a statement that it is to have effect as indefinite leave to enter the UK.

A person seeking leave to enter who holds a current entry clearance (which does not have effect as leave to enter) may be refused leave to enter only where the Immigration Officer is satisfied that:

- ◆ false information was given to the entry clearance officer or
 - ◆ *material* facts were withheld for the purpose of obtaining the entry clearance;
- or
- ◆ a change of circumstances, since the entry clearance was issued, has removed the basis of the holder's claim to admission (except where the change of circumstances relates only to the person becoming over age for entry in one of the categories contained in paragraphs 296-316 of the Immigration Rules since the issue of the entry clearance).

In addition, the holder of an entry clearance may be refused entry on the following grounds:

restricted returnability *medical grounds* *criminal record*

deportation order

exclusion conducive to the public good

(see **Section 2** to this chapter for guidance relating to these last points).

2. EXAMINATION OF HOLDERS OF ENTRY CLEARANCE WHICH DO NOT CONFER LEAVE TO ENTER

The possession of such an entry clearance, whether obligatory or optional, may be taken as prima facie evidence that the person presenting it is eligible for admission to the UK according to the terms of the entry clearance. The immigration officer's examination should therefore normally be confined to establishing that the person is intending entry for the purpose for which the clearance was issued and there is no reason to believe that any of the above circumstances apply.

3. EMPLOYMENT OF FALSE REPRESENTATIONS OR FAILURE TO DISCLOSE MATERIAL FACTS

3.1. False Representations

Whether or not leave to enter should be refused depends not on whether it would have been granted on the basis of all the facts known to the immigration officer at the port, but whether the false representations made for the purpose of obtaining the clearance played a part in the granting of that clearance.

In order to justify refusal of leave to enter to a person holding an entry clearance on these grounds, the immigration officer will therefore need to:

- ◆ establish that false (i.e. inaccurate) representations were made *for the purpose of* obtaining the clearance; and
- ◆ show that the representations were sufficiently linked to the issue of the clearance to remove the eligibility reflected in it - in other words, that it is likely that the clearance would not have been issued had the true facts been known.

Relevant representations may include verbal or written statements, those entered on the application form or documents submitted in support of an application. They may have been made by the applicant himself or on his behalf by a third party.

Minor misrepresentations, e.g. inaccuracies on the entry clearance application form which have no real bearing on the case, may be disregarded, provided that the passenger is generally acceptable for the purpose for which he seeks entry.

3.2. Failure to disclose material facts

Leave to enter may be refused on this ground where a person has failed to disclose to the entry clearance officer a fact that would have been *material* to the decision to grant the clearance.

It should be noted, however, that the Court of Appeal has held (in the case of IRACKI) that there is no positive duty of candour on an applicant to volunteer information to the entry clearance officer unless he is given an indication of the kind of information which is material to the application. Refusal on this ground is not therefore applicable if the entry clearance officer did not indicate to the passenger the kind of information he required.

3.3. Whether or not to the holder's knowledge

It is important to bear in mind that the employment of false representations or failure to disclose material facts may be grounds for refusal, *whether or not the holder was aware* of them. Below are two examples:

- * A person who holds an entry clearance for employment seeks entry as a representative of an overseas news agency: It is discovered that his employers, who supported his application by confirming that he was being posted on a long-term assignment, have, without the employee's knowledge, all along intended to discontinue his employment after his arrival in the United Kingdom.
- * A child arrives with an entry clearance endorsed "Settlement - Accompanying mother to join father": It is discovered that the father had made the entry clearance application on behalf of the child, knowing that the child's mother did not intend settling in the United Kingdom but that she would leave the child here, after a short stay.

4. CHANGE OF CIRCUMSTANCES

Paragraph 321(ii) applies where there has been a change of circumstances such that the holder no longer qualifies for leave to enter in the capacity for which the clearance was issued. Examples of such a change of circumstances would include the withdrawal of an offer of employment in the case of a person with an entry clearance for "Employment", the withdrawal of sponsorship in a student case or the permanent departure from the United Kingdom of the sponsor of a child coming for settlement.

Paragraph 321(ii), however, makes a specific exception from this Rule in the case of children seeking entry under Paragraphs 296-316 of HC 395, where the only change of circumstances is that they have reached the age of 18 since the issue of the clearance.

5. REFERENCE TO ISSUING OFFICER

In order to establish what information was available to the entry clearance officer, Ports may contact British Diplomatic Service posts abroad either direct by fax or through The Joint Entry Clearance Unit (JECU). Precise instructions on how to contact posts are held at all ports.

The message sent to the issuing officer should normally request a copy of the visa / entry clearance application form together with any supporting documents and should list any specific questions to which the answer is required. It should be borne in mind, however, that both the message and the reply will have to be produced in the event of an appeal.

6. HOME OFFICE AUTHORISED VISAS

In the case of Home Office authorised visas, if it appears to the immigration officer as a result of his examination that the person's true circumstances could not have been known when the case was considered or have changed since the visa was authorised, he should refer to OASIS before giving or refusing leave to enter.

7. PRACTICAL CONSIDERATIONS

7.1. Refusal formulae

ANNEX A (below) provides examples of refusal formulae.

7.2. Cancellation codes

- E4 Lack of required non-settlement entry clearance, including those set aside on grounds of misrepresentation, forgery, failure to disclose material facts or where a change of circumstances has removed the basis of claim to admission
- F1 For settlement without required entry clearance, including holder of forged entry clearance, entry clearance obtained by deception, or entry clearance where a change in circumstances has removed basis of claim to admission

7.3. Right of appeal and corresponding cancellation forms

There is a right of appeal *before removal* where a person who holds a current entry clearance (has their leave cancelled).

Form IS 82 CANX should therefore be used.

7.4. **Removal Directions**

It is not necessary to delay the serving of removal directions, even if the passenger states his intention of exercising his right of appeal before removal. Once he has appealed, however, any removal directions must be deferred pending the appeal.