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**IMMIGRATION DIRECTORATES' INSTRUCTIONS**

**CHAPTER 9 SECTION 4**

**REFUSAL OF VARIATION OF LEAVE TO ENTER OR REMAIN ON GENERAL  
GROUNDS (PARAGRAPH 322 HC 395)**

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## 1. INTRODUCTION

1.1. In addition to the grounds for refusal to be considered under each category of the Rules (substantive grounds), there are general grounds which need to be taken into account before granting leave to remain or varying leave to enter. Although a person may meet the requirements of the relevant category of the Rules, consideration must also be given as to whether any of the general grounds apply. Refusal of variation of leave to enter or remain on general grounds is covered in paragraph 322 of the Immigration Rules.

## 2. PARAGRAPH 322(1) - VARIATION OF LEAVE TO ENTER OR REMAIN IS SOUGHT FOR A PURPOSE NOT COVERED BY THE RULES

2.1. Paragraph 322(1) provides for refusal if variation of leave to enter or remain is sought for a purpose not covered by the Immigration Rules. Any application not provided for elsewhere in the Rules will fall for refusal under this paragraph.

2.2. An applicant's right of appeal against a refusal on the grounds they are applying for something not covered by the rules is limited by virtue of Section 88(2)(d) of the Nationality Immigration and Asylum Act 2002.

2.3. Care should be taken when considering refusal under Paragraph 322(1); the fact that a person does not qualify under any Rules does not mean that there are no Rules applicable to them. e.g.

### 2.3.1. Scenario 1

A person applies on a SET(O) application form for Indefinite Leave to Remain under paragraph 317 of the Immigration Rules, as a *cousin* of a person present and settled in the United Kingdom.

The applicant should be refused for failing to meet the requirements of Paragraph 317(i) because he is not a relative who can qualify under Paragraph 317(i) rather than under 322(1) for the reason that there are no rules that permit a cousin to be a dependant relative of a person present and settled.

2.4. Paragraph 322(1) should be used when refusing an applicant who has specifically applied for leave outside the rules.

2.5. Where Paragraph 322(1) is used caseworkers should set out the exact reason why the applicant wishes to remain in the United Kingdom as part of their refusal notice and then state that this is not covered in the Immigration Rules. e.g.

You have applied for leave to remain in the United Kingdom in order to [*insert specific reason here*]. The Secretary of State is not satisfied leave to remain is being sought for a purpose covered by the Immigration Rules.

rather than

You have applied for leave to remain outside the Immigration Rules. The Secretary of State is not satisfied leave to remain is being sought for a purpose covered by the Immigration Rules.

### [Refusal Formula](#)

## **3. DECEPTION**

Where a person is applying for leave to remain in the United Kingdom and has used deception, either as part of their current application or as part of their previous application, then their application must be refused under either Paragraph 322(1A) or Paragraph 322(2). The current application must be refused irrespective of whether or not the previous application involving deception was granted or refused. The rules treat the successful and unsuccessful use of deception equally.

Section 10(1)(b) of the Immigration and Asylum Act 1999 (as amended) gives Immigration Officers the power to remove from the United Kingdom a person who has used deception in these instances.

## **4. PARAGRAPH 322(1A) – DECEPTION USED IN CURRENT APPLICATION**

4.1. The Immigration Rules require an application to be refused where false representations are made and/or false documents or information are submitted and/or material facts are not disclosed in relation to an application.

4.2. **False representations** : a false representation is made when an applicant or third party lies or makes a false statement in an application, either orally or in writing (whether on the application form or on other documents). To consider refusing an application, the caseworker must be satisfied to a high standard that a false representation has been made. Applications should not be refused because the caseworker suspects that false representations have been made, or because of minor inaccuracies in the application, for example an inaccurate address or mis-spelt name.

4.3. **False documents or information** : a document or false information submitted alongside an application which is independently verified as being forged or not genuine. A false document includes:

- A genuine document which has been altered or tampered with;
- A counterfeit document (one that is completely false);
- A genuine document that is being used by an imposter;
- A genuine document which has been fraudulently obtained or issued;
- A genuine document which contains a falsified or counterfeit visa/endorsement.

4.4. The Rules state that a refusal must be made irrespective of whether the false representations / documents or information have a bearing on the application.

4.5. An application should be refused even if it would have otherwise succeeded had the false representations / documents or information not been submitted.

4.6. An application should be refused even where the applicant does not know (or claims not to know) it is a false document.

#### 4.7. **Material facts not disclosed**

4.8. There is a key distinction between providing false information and not disclosing information.

4.9. An application should only be refused where a person has not disclosed **material** facts. An application cannot be refused where the information the applicant has withheld from their application is not relevant to the decision made on their application and where failure to disclose is an innocent mistake. e.g.

##### *4.9.1. Scenario 2 – Example of withheld information not relevant to the decision*

A person who has submitted an application for Indefinite Leave to Remain as a spouse has not declared they are in receipt of Child Benefit.

Investigations reveal they are in receipt of Child Benefit but this is legitimate because they fall under one of the exceptions to “no recourse to public funds”.

The application cannot be refused under Paragraph 322(1A) because, had the applicant disclosed the fact they are receiving Child Benefit it would not have led to their application being refused.

Had the applicant in Scenario 2 **not** fallen under one of the exceptions to “no recourse to public funds” and they had not disclosed they were receiving it, the application should be refused under Paragraph 322(1A) because their claim to Child Benefit **is** relevant to the outcome of their application (they would be refused for being in breach of their conditions).

#### 4.10. **The need for evidence**

4.11. As with any refusal it is important to have evidence to support the decision. The wording of Paragraph 322(1A) states “false representations **have been** made or false documents or information **have been** submitted” i.e. the burden of proof is on caseworkers (and not the applicant) to prove a false representation and that it was made for the purpose of obtaining leave. The standard of proof rests on the balance of probabilities, for matters of false representations, documents and other information it is a higher balance of probabilities than normal.

4.12. In the case of false representations caseworkers should clearly show that the applicant’s representations conflict with other evidence / previous application e.g.

##### *4.12.1. Scenario 3 – Example of proven conflicting evidence*

An applicant has applied for Indefinite Leave to Remain as the mother of a person present and settled in the United Kingdom. On the SET(F) application form they have stated that they lived alone in their home country and their only source of income was from their prospective sponsor in the United Kingdom.

The caseworker has requested the Visa Application Form (VAF) which states that the applicant lives with family members in their own country and they receive income from rent received from tenants.

These two statements clearly contradict each other and it appears that the applicant is using false representations in this application in order to meet the Immigration Rules. The caseworker should use Paragraph 322(1A) to show that the applicant is using false representations, detailing the inconsistencies in each application. The caseworker should also refuse on the substantive rules where appropriate ([see Paragraph 16 below](#)).

4.13. In the case of false documents or other information, independent evidence should be sought. Ideally, the issuing authority of the document or information in question should provide a written statement confirming the document or information is not genuine.

4.14. Action on CID

4.15. Any applicant refused under Paragraph 322(1A) will potentially face a ban on obtaining future Entry Clearance or Leave to Enter by virtue of Paragraph 320(7)(B).

Any applicant who breaches immigration laws, for example seeks leave to enter or remain by deception, enters illegally, overstays for more than 28 days or breaches his/her conditions of stay) will be banned from coming back to the UK for the following periods;

- 1 year, if they left the UK voluntarily (not at public expense) after the breach;
- 5 years, if they left the UK voluntarily at public expense following the breach; and
- 10 years, if they were removed or deported.

The rule does not apply to people applying for re-entry to the UK in one of the following capacities;

- Spouse, civil partner, unmarried or same-sex partner, or
- Fiancé(e) or proposed civil partner, or
- Parent, grandparent or other dependant relative, or

- Spouse, civil partner or unmarried or same sex partner of a refugee or person with humanitarian protection, or
- People exercising rights to a child, or
- People who were once overstayers in the UK but were subsequently granted a period of leave to remain by the UK Border Agency, or
- People who breached immigration law when they were under the age of 18, or
- People who have been accepted by the UK Border Agency as a victim of trafficking.

4.16. In order to make Entry Clearance and Immigration Officers aware of an applicant's history, caseworkers should make specific reference to the reasons for refusal on CID.

#### **4.17. Alternatives to refusing on general grounds**

4.18. Where it is thought that a document or information is false but independent verification is not possible, or disclosing the verification is not possible, then caseworkers should consider refusing under the substantive immigration rules.

4.19. Caseworkers are free to point out the perceived inconsistencies in a document and assert that it cannot be relied upon because of those inconsistencies. This will provide the basis for a robust refusal on whatever grounds the document has been provided to substantiate. e.g.

##### *4.19.1. Scenario 4 – Example of where independent verification cannot be obtained.*

An applicant for further leave to remain under Tier 4 (general) student must score 10 points for the maintenance requirement. In doing so they produce a bank statement showing that they have the level of funds specified in the rules/guidance.

Closer inspection of the statement reveals that the figures given for transactions do not add up to the statement balance. Furthermore there are spelling mistakes on the document.

The caseworker approaches the issuing authority to verify that the document has been falsified but they are unable to supply the caseworker with information because of customer confidentiality issues.

Because independent verification cannot be sought the caseworker cannot use Paragraph 322(1A).

Instead the caseworker awards zero points for the maintenance requirement and refuses the application under the substantive rules. The refusal notice should point out each error on the statement and state that the caseworker is unable to accept it as evidence of finances and

therefore the applicant has not proven they can meet the maintenance requirement.

[Refusal Formula](#)

**5. REFUSALS UNDER PARAGRAPH 322(2) – 322(11)**

5.1. The Immigration Rules state that persons falling for refusal under Paragraphs 322(2) – 322(11) should *normally* be refused i.e. refusal under general grounds may be waived where there are compelling circumstances.

5.2. Where a decision to refuse is taken then caseworkers should explain why the decision to refuse (and not exercise discretion) is appropriate.

[Suggested Additional Wording](#)

**6. PARAGRAPH 322(2) - DECEPTION USED IN PREVIOUS APPLICATION**

6.1. The provisions of Paragraph 322(2) allow for refusal of an application for variation of leave to enter or remain where it has come to light that the applicant used deception as part of a previous application (irrespective of whether or not that application was granted or refused). Guidance on what constitutes false representations and material facts can be found at [Paragraph 4.2](#) above.

6.2. Caseworkers are required to show two things : that an applicant *did* deceive the Entry Clearance Officer / Immigration Officer / Caseworker when making their application and the deception was used for the purposes of obtaining or attempting to obtain leave.

6.3. It is not enough to show that a person's circumstances / intentions are different now to how they were before. The caseworker will have to show that a person's circumstances / intentions have always been as they are now and deception was used in order to hide those circumstances.

6.3.1. *Scenario 5 – Deception used in previous application*

An applicant has submitted an application for settlement on form SET(O) on the basis of UK Ancestry. Birth certificates submitted with the current application have been confirmed to be false. Records show that the same birth certificates were used on the previously granted application. Where it is confirmed that the applicant used deception as part of a previous application, the current application should be refused under paragraph 322(2), irrespective of whether or not the previous use of deception was, or was not successful.

The rules treat the successful and unsuccessful use of deception equally.

[Refusal Formula](#)

**7. PARAGRAPH 322(3) - FAILURE TO COMPLY WITH ANY CONDITIONS ATTACHED TO HIS STAY**

7.1. When considering whether a person qualifies for further leave their previous immigration history may be taken into account. Refusal under this paragraph should normally only be appropriate where a person has shown by their conduct that they have breached the conditions of their stay.

7.2. Conditions of stay usually refers to the conditions endorsed on a person's Entry Clearance / United Kingdom Residence Permit e.g.

- No recourse to public funds
- No recourse to public funds, No work or engaging in business.
- No recourse to public funds, Employment as a Minister of Religion, Changes must be authorised by The Secretary of State.

7.3. Taking each example in turn the following would constitute refusal under Paragraph 322(3) in addition to any refusal under the substantive rules.

- evidence that a person had recourse to public funds,
- evidence that a person has taken employment
- evidence that a person has been employed in a position other than a Minister of Religion

#### [Refusal Formula](#)

### **8. PARAGRAPH 322(4) - FAILURE TO MAINTAIN AND ACCOMMODATE WITHOUT RECOURSE TO PUBLIC FUNDS**

8.1. The requirement for a person to maintain and accommodate himself and any dependants without recourse to public funds is now a requirement of all of the categories of the Rules and is now also a condition of stay. Therefore, failure to comply with any condition restricting access to public funds would fall to be refused under the relevant category of the Rules and also under paragraph 322(3) above. Refusal under Paragraph 322(4) will no longer be appropriate. [See also Chapter 1, Section 7 "Public Funds"](#).

### **9. PARAGRAPH 322(5) - THE UNDESIRABILITY OF PERMITTING A PERSON TO REMAIN IN THE UNITED KINGDOM**

9.1. A person may be refused under this paragraph if it seems right to do so for the public good in the light of his character, conduct or associations or the fact that he represents a threat to national security.

9.2. Where it is decided that refusal is appropriate on these grounds, refusal action should be taken under Paragraph 322(5) of the Immigration Rules. It is important to remember that this paragraph refers to an applicant's character **or** conduct **or** associations **or** that they represent a threat to national security. The applicant only needs to meet one or more of the matters listed under 322(5) not all of them.

9.3. The reasons given **must be specific**; vague generalisations about a person's character, conduct or associations will **not** be acceptable. Caseworkers should only make reference to the matter in question e.g.

where a person is being refused on the basis of their conduct then “threat to national security” should always be removed from the refusal wording.

9.4. Proposed refusals under Paragraph 322(5) should always be referred to a Senior Caseworker.

[Refusal Formula](#)

**10. PARAGRAPH 322(6) - REFUSAL BY THE SPONSOR TO GIVE AN UNDERTAKING**

10.1. Where the applicant is dependent upon his sponsor for support and accommodation, evidence of the ability of the sponsor should normally be sought, and on occasions it may be deemed appropriate to request the sponsor to give an undertaking in writing that he will be responsible for the maintenance and accommodation of the applicant during his stay in the United Kingdom. If the sponsor refuses to comply with this request, the application may be refused. If the sponsor has previously given such an undertaking but then failed to honour this, the application may also be refused.

[Refusal Formula](#)

**11. PARAGRAPH 322(7) - FAILURE TO HONOUR ANY DECLARATION OR UNDERTAKING**

11.1. Where a person has given an undertaking to an entry clearance officer, immigration officer or the Secretary of State that he would, for example, leave at the end of a stated period of time and would not seek to extend his stay, the onus is on the applicant to provide an acceptable reason for his change of mind. Where there is good reason, for example, unforeseen circumstances, leave may be granted. However, where there does not appear to be a good reason and particularly where there is reason to doubt the applicant's future intentions, leave to remain should be refused.

11.2. In any refusal under this paragraph it is for the Secretary of State to show that a declaration or undertaking was given by the applicant. Such a refusal should only be made where the applicant's motives are suspected and there is clear evidence of the undertaking

[Refusal Formula](#)

**12. PARAGRAPH 322(8) – RETURNABILITY**

12.1. This paragraph provides for the refusal of an application for further leave if the Secretary of State is not satisfied that the applicant would be able to return to another country if he were allowed to remain longer in the United Kingdom. It is therefore important before granting further leave to check the validity of the passport or travel document, returning visa or exit permit, if applicable. This ground may not be used in respect of a person who qualifies for settlement or who is being given limited leave with a view to settlement.

[Refusal Formula](#)

### 13. PARAGRAPH 322(9) - FAILURE TO PRODUCE INFORMATION, DOCUMENTS OR OTHER EVIDENCE WITHIN A REASONABLE TIME

- 13.1. Paragraph 34 of the Immigration Rules states that the list of evidence requested on a prescribed application form must be provided, the period of time allowed in which to provide this information and the procedures to follow in order to make the application valid.
- 13.2. Where an application has been made valid but further information is required the applicant should be advised to reply within the specified number of days and an addressed label should be enclosed. The applicant should be advised that failure **without good reason** to provide all the relevant supporting information as requested may result in the application being refused.
- 13.3. If an applicant fails to provide any information, documents or other evidence as requested within the required time, the application should be refused solely under Paragraph 322 (9) subject to [Paragraph 16 below](#).
- 13.4. Where an applicant requests reconsideration of his application (after it has been refused under this paragraph) then, unless the requested information and refusal crossed in the post or was lost by UK Border Agency, they should be advised that their case can only proceed by way of a new application.

#### [Refusal Formula](#)

### 14. PARAGRAPH 322(10) - FAILURE TO ATTEND FOR INTERVIEW

- 14.1. Where it is decided that in order to make a decision on the application an interview will be required (normally in marriage and asylum applications) and the applicant fails to attend an interview without contacting the Home Office, the application falls to be refused.
- 14.2. If the applicant can provide a reasonable explanation as to why he cannot attend or failed to attend then he should be given a further opportunity to attend for interview, but he should be warned that failure to attend a second interview may result in his application being refused. However, where the applicant fails to contact the Home Office or to provide a reasonable explanation for his failure to attend then the application should be refused.

#### [Refusal Formula](#)

### 15. PARAGRAPH 322(11) - FAILURE IN THE CASE OF A CHILD UNDER 18 TO OBTAIN PARENTAL CONSENT

- 15.1. Where there is a reason to doubt that the child is in the United Kingdom or is seeking to remain in the United Kingdom with the consent of his parent(s) or **legal guardian**, then we should request written consent to the application from his parents or **legal guardian**. If this is not forthcoming then the application should normally be refused. This paragraph does **not** apply to a child admitted as an asylum seeker.

#### [Refusal Formula](#)

## 16. LINKING GENERAL CONSIDERATIONS AND SUBSTANTIVE RULES

### 16.1. Leading on the substantive rules.

16.2. Care should be taken when considering linking a general consideration to the appropriate substantive Rule (i.e. the Rule under which leave is being sought). In cases where the requirements of the substantive Rule provide for refusal, the application should be refused on that basis alone e.g.

### 16.3. *Scenario 6a – Refusing under the substantive rules.*

A person is applying for leave to remain as the spouse of a settled person, are required by Paragraph 284(ii) to be married to a person present and settled in the United Kingdom. They fail to produce a marriage certificate (as they are not yet married), despite requests to do so, he should be refused solely under paragraph 284(ii).

There will be no need to refuse on Paragraph 322(9), the applicant was not delaying the submission of evidence, because there was no evidence to submit.

### 16.4. Leading on the general grounds for refusal

16.5. Where the refusal is based on the general grounds but there is a link between the general ground and the substantive rules, the substantive rule should be added to the reason for refusal. e.g.

### 16.6. *Scenario 6b – Refusal leading on general grounds*

A person applying for leave to remain as a Tier 4 (general) student must provide a valid visa letter from a licensed educational establishment and specified supporting documents to score 30 points for "attributes" under Appendix A of the Rules. Following verification checks it is independently confirmed that they have provided a forged visa letter and/or specified supporting documents. The application falls for refusal under paragraph 322(1A) because they have used deception, but also on paragraph 245X(c) as they will score 0 points for "attributes".

## 17. REFUSAL FORMULA

Suggested refusal formulae on the most-used General Grounds for Refusal is reproduced below. The items in red are to be entered or chosen depending on the nature of the application.

### **Paragraph 322(1)**

***(Limited Right of Appeal by virtue of S88(2)(d) of the NIA Act 2002)***

You have applied for **indefinite/leave** to remain in the United Kingdom in order to **[insert specific reason here]**. The Secretary of State is not satisfied leave to remain is being sought for a purpose covered by the Immigration Rules.

***[Explain reasons here]***

### **Paragraph 322(1A)**

You have applied for **indefinite/leave** to remain in the United Kingdom as **[enter category here]** but the Secretary of State is satisfied you have **made false representations/submitted false documents/submitted false information/withheld material facts** in relation to your application.

*[Explain reasons here]*

### **Paragraph 322(2)**

You have applied for **indefinite/leave** to remain in the United Kingdom as **[enter category here]** but the Secretary of State is satisfied you **made false representations / failed to disclose a material fact** for the purpose of **obtaining leave to enter as / obtaining your previous variation of leave as [enter category here]**

*[Explain reasons here]*

### **Paragraph 322(3)**

You have applied for **indefinite/leave** to remain in the United Kingdom as **[enter category here]** but the Secretary of State is satisfied you failed to comply with the conditions attached to the grant of leave to **enter/remain**

*[Explain reasons here]*

### **Paragraph 322(5)**

You have applied for **indefinite/leave** to remain in the United Kingdom as **[enter category here]** but the Secretary of State is satisfied it would be undesirable to permit you to remain in the United Kingdom in the light of **your character / conduct / associations / the fact that you represent a threat to national security.**

*[Explain reasons here]*

### **Paragraph 322(6)**

You have applied for **indefinite/leave** to remain in the United Kingdom as **[enter category here]** but the Secretary of State is satisfied that your sponsor, **when requested to do so, has not given an undertaking in writing to be responsible for your maintenance and accommodation in the United Kingdom / has failed to honour an undertaking to be responsible for your maintenance and accommodation in the United Kingdom.**

*[Explain reasons here]*

### **Paragraph 322(7)**

You have applied for **indefinite/leave** to remain in the United Kingdom as **[enter category here]** but the Secretary of State is satisfied you have failed to honour a declaration or undertaking given orally or in writing as to the intended duration and/or purpose of your stay

*[Explain reasons here]*

### **Paragraph 322(8)**

You have applied for **indefinite/leave** to remain in the United Kingdom as **[enter category here]** but the Secretary of State is not satisfied that you will be returnable to another country if you are allowed to remain in the United Kingdom for a further period;

*[Explain reasons here]*

### **Paragraph 322(9)**

You have applied for **indefinite/leave** to remain in the United Kingdom as **[enter category here]** but the Secretary of State is satisfied you have failed to produce, within a reasonable time, information, documents or other evidence required by the Secretary of State to establish your claim to remain under these Rules;

*[Explain reasons here]*

### **Paragraph 322(10)**

You have applied for **indefinite/leave** to remain in the United Kingdom as **[enter category here]** but the Secretary of State is satisfied you have failed, without providing a reasonable explanation, to comply with a request made on behalf of the Secretary of State to attend for interview;

*[Explain reasons here]*

### **Paragraph 322(11)**

You have applied for **indefinite/leave** to remain in the United Kingdom as **[enter category here]** but the Secretary of State is satisfied you have failed to provide written consent to the application from **your parent(s) / legal guardian**

*[Explain reasons here]*

### **Suggested additional paragraph for refusals under 322(2) – 322(11)**

In light of this, the Secretary of State has deemed that refusal is appropriate and is not prepared to exercise discretion in your favour.