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**CHAPTER 9
SECTION 7****THE IMMIGRATION OFFICER'S
EXPLANATORY STATEMENT****1. PURPOSE**

The explanatory statement prepared by the immigration officer forms the basis of the Home Office case in proceedings on appeal, whether these are heard before or after the removal of the passenger. The Immigration and Asylum Appeals (Procedure) Rules 2003 require that when an appeal is received, an explanatory statement is prepared and we file the following documents with the appellate authority:

- The notice of decision served on the applicant
- Any documents giving reasons for decision
- Any record of interview with the appellant
- Any documents relevant to the reasons for decision
- Any other notice of decision relating to the appellant attracting a right of appeal

These documents must be copied to the appellant (or his representative), notifying the date on which they were sent to the appellate authority.

The purpose of the statement is:

- * to record what passed between the passenger and the immigration officer(s) dealing with his case;
- * to record what information was subsequently obtained by investigation;
- * to give an account of and evaluate the passenger's explanations, if any, when the matters held against him were put to him; and
- * to show how the decision to refuse entry was arrived at and that the decision was in accordance with the Immigration Act 1971 and the Immigration Rules.

2. CONTENT

The immigration officer's explanatory statement must be confined to the matters relevant to the application for entry and to issues which are relevant to the immigration officer's decision and to the appeal. In the event that there is more than one appealable decision, the statement should address all decisions which are not covered by the refusal notice. The appellate authority is obliged to consider all such decisions simultaneously, in order to prevent the lodging of a late appeal on the other issues.

Only the Immigration Rules are relevant; unpublished instructions have no standing. The lengthy consideration of discretionary treatment **outside the Rules** is normally irrelevant to the appeal, in which case it should not be included.

Where, however, the passenger was seeking entry under a **published concession**, the statement should show that the immigration officer examined the case in the light of the

terms of the concession and should explain why he was not prepared to use his discretion. (See **Chapter 9, Section 1, "Adverse Decisions - General Guidance"**, under the heading "Concessions" for further advice on this point.)

Such matters as the justification for detention should be clearly noted on the file but, similarly, are not relevant to the appeal.

2.1. **Previous refusals**

The mere fact of a previous refusal cannot be adduced as evidence, unless its relevance is argued and the facts of that refusal attributed to their source.

2.2. **Dual appeals**

When a person has more than one right of appeal, both appeals will be heard together. The immigration officer should prepare an explanatory statement covering the refusals in the normal way. . Once completed and cleared by the port CIO/HMI, the statement should be sent to Appeals Processing Centre (APC6) at 6th Floor, Advance House, 15 Wellesley Rd, Croydon.

3. **INFORMATION NOT DISCLOSABLE TO THE PUBLIC**

As the statement is a public document, any matter that warrants a security classification must be omitted. Care must also be taken not to disclose the methods of examination and investigation by which any deception or evasion has been detected.

The statement should not include any information that it would be contrary to the national interest to disclose.

3.1. **Evidence of forged documents**

Under section 108 of the Nationality, Immigration and Asylum Act 2002 evidence of a forged document which would be contrary to the public interest to disclose, may be withheld from the appellant or his representative.

The immigration officer's statement should contain the observation that if the forgery is disputed on appeal, a separate statement, giving details of the irregularities, will be submitted by the respondent. An allegation will be made under Section 108 of the Nationality, Immigration and Asylum Act 2002 for the exclusion of the appellant, his representative and members of the public from the hearing while this evidence is being given, it being contrary to the public interest that details relating to the detection of forgery should be disclosed other than to the appellate authorities.

The separate statement referred to, detailing evidence of the forgery, should be classified "Restricted" and headed "Additional evidence for presentation Under Section 108 of the Nationality, Immigration and Asylum Act 2002".

4. OTHER INFORMATION NOT TO BE INCLUDED

4.1. Previous convictions - the Rehabilitation of Offenders Act

The Rehabilitation of Offenders Act 1974 provides that a rehabilitated person whose conviction is spent is to be treated in Great Britain for all purposes in law ***as if he had not committed or been charged with or prosecuted for or convicted of or sentenced for the offence or offences which were the subject of that conviction.*** Publication of any information relating to a spent conviction may result in an action for defamation. (See also ***Chapter 32 "Prosecution Cases at Ports"***.)

It is an offence under the Rehabilitation of Offenders Act to disclose to another person, other than in the course of one's official duty, information contained in official records about a spent conviction. Disclosure to a police officer or to another Government Department may thus, for example, be justified but immigration officers must ensure that there is no reference to a spent conviction in any explanatory statement or other document that might become public whether in appeal proceedings or otherwise.

As appeals can remain outstanding for months, even years, special care must be taken in any case where a conviction is likely to become "spent" before the appeal is finally determined.

4.2. Information not relevant to the decision

Information which is of interest to Headquarters, but not directly relevant to the decision, must be excluded from the statement and reported separately.

There may be other background information which may be valuable to the Presenting Officer who will represent the immigration officer (the respondent), in presenting the case or in answering supplementary questions. Such information should be noted in the case papers.

Information about the day-to-day handling of a case and domestic arrangements need only rarely be included in statements. Port files usefully record this material, which is helpful and indeed vital if there is a complaint or other query, but in the main information of this type is not in issue at appeal and can be safely discarded.

5. GENERAL POINTS

Words and phrases used in the statement must be intelligible to people outside the Immigration Service. No abbreviations or jargon should be used. The statement should be a simple account of the facts leading to the decision. Ideally, the immigration officer who refused entry to the passenger should write it in the 1st person. Where this is not possible, another immigration officer should report it in the 3rd person. Officers drafting appeal statements should keep the following points in mind:

- * Where several officers were concerned in the examination the information obtained by each of them should be attributed to them by name.
- * To avoid frequent reference to the passenger's name he should be referred to as "the passenger".

- * Passive and impersonal verb forms ("He was asked.....", "It was stated.....") are ambiguous and should be replaced by active forms.
- * The naming of officials outside the Immigration Service should be avoided. Such persons should be referred to by the office they hold eg "an official of the Foreign and Commonwealth Office".
- * Facts favourable to the passenger, if they are relevant, should be included as well as those unfavourable to him.
- * **Fact** must be clearly separated from **opinion based on inferences** and the latter must be well-founded and not arbitrary.
- * If false representation, non-disclosure of material facts or change of circumstances is alleged, it must be made clear **what** was represented or **what the circumstances were in the first place**, usually by reference to the source eg. the entry clearance officer, and supported whenever possible by the source's confirmation in writing.
- * Hearsay evidence should be supported by documentary evidence (eg. an earlier report, interview notes or a letter), which should be adduced as an appendix.
- * Where, at any stage of the interview, the passenger or anyone supporting his application have been asked if they have suffered from any handicap (eg linguistic misunderstanding, tiredness, nervousness, confusion etc), this should be recorded; any affirmative reply should be also be recorded as well as any palliative or remedial steps taken.
- * Gratuitous opinions, generalisations, and expressions that might be construed as biased or prejudiced (indicating that the immigration officer was influenced not by the merits of the case alone but by other considerations) can have a very damaging effect on a case at appeal and must on no account be included in a statement.

6. STRUCTURE OF THE STATEMENT

The first section of the statement should set the scene, giving the arrival details of the passenger, the identity of the interviewer and the interpreter, the language used, whether there were any difficulties in communication, the basis of application for leave to enter, etc.

6.1. Account of the interview(s)

The objective account of the interviews should follow. This should be as unambiguous as possible. The writer should see himself as a witness reporting what he asked and heard. Where a number of interviews have occurred, the dates of the interviews should be recorded in chronological order with the name of the interviewing officer in each case.

It is superfluous to record details of questions and answers in later interviews which serve only to confirm undisputed facts which have already been raised. A general

statement that the other details obtained in an interview were consistent with what had gone before will be adequate. On the other hand, details of new points brought out at subsequent interviews, particularly where statements contradict what was said previously or raise points of disagreement need to be covered individually.

Where an interview has been recorded in note form by the immigration officer, the explanatory statement should simply detail in narrative form what was said. Unless it is not clear exactly what question was asked, the question should not normally be recorded. General information, for instance that relating to a passenger's home circumstances or education, can often be summarised by one general question, eg "I asked the passenger to tell me about his circumstances at home in Australia and he told me that"

On vital points and main issues, however, it is as important to record the question asked as the answer received. This also applies where there is a conflict of evidence e.g. between what the passenger himself has said on two separate occasions, or between statements made by the passenger and a sponsor, respectively.

6.2. Using "Question and Answer" (Q & A) interview notes

Records of interviews made contemporaneously by immigration officers in "Question and Answer" format, can be particularly helpful when drafting statements in relation to appeals before removal, where the onus is upon the immigration officer to discharge the burden of proof.

This format allows the passenger's remarks to be seen in their correct context and helps overcome any allegations at the appeal hearing that the immigration officer misrecorded or misconstrued what the passenger said. It may also illustrate to what extent the passenger was helpful in his replies, or whether his replies were evasive and questions had to be repeated - matters which could have a bearing on the passenger's overall credibility. Should the passenger fail to reply to a question, this should be recorded and an explanation for his failure to reply sought.

The typed transcript of each "Q & A" interview can either be inserted into the body of the statement or included as appendices to it. A copy of the original manuscript should also be enclosed to show that the typed transcript is a true record.

6.3. Further enquiries and information received

An account of any further enquiries or other information received should be reported, again in narrative form, and inserted into the text in chronological sequence, as appropriate, between accounts of successive interviews.

6.4. Recording passenger's reaction to conclusions reached by the immigration officer

Where, as a result of the interviews, the immigration officer has reached certain conclusions (either directly, or from reasonable inferences), and has put these to the passenger and his sponsor(s), for the purpose of "natural justice", ie. to give them an opportunity to clear up the difficulties, the reaction of the parties should be recorded.

7. DRAWING TOGETHER THE FACTS

This part of the statement should normally consist of:

- * A short passage which underlines the main points, inconsistencies or contradictions in the evidence, particularly in complicated cases.
- * A reference to the wording of the applicable Rule. It is seldom necessary to quote the entire applicable Rule(s) word for word; generally it is sufficient to isolate the relevant words from the Rule(s) and cite them with a reference to the Paragraph number.
- * The conclusions drawn by the immigration officer. In every case he should take care to see that the passenger's claims to admission are completely refuted in terms drawn precisely from the terms of the Immigration Rules.

7.1. More complex cases

In more complex cases, where evidence needs to be assessed, conclusions drawn, and a balanced decision reached, some brief emphasis on a listed series of facts or a sequence of events can usefully draw the arguments together. Overstatement should be avoided, and due weight given to factors in the passenger's favour - eg "In arriving at a decision on X's application for a two week visit, I accepted that he had an entirely credible reason for coming for the wedding, and that ample funds were available; but

1. he had brought a reference from his employer, and I did not believe his explanation that he had packed it only for safekeeping
2.
3.

and in the light of these factors/considerations, I was not, on balance, satisfied.....".

7.2. The burden of proof - terms to be used

In conclusion of his statement, when giving the reasons for his decision to refuse leave to enter, the immigration officer should avoid the use of terms which shift the burden of proof in a particular case:

- * Where the Statute or the Rules authorise the immigration officer to refuse leave to enter if he is not **satisfied** as to a particular point, drafting in the form "I was not satisfied....." is correct.
- * Where the Rules put the criteria **factually**, we should draft in the same form eg "Mr X was currently subject to a deportation order", or, negatively, "Mr X had failed to produce a valid United Kingdom Entry clearance for entry in this capacity".

An assertion on the immigration officer's part (eg "I **thought** Mr X's intention was to work and settle") would bring the onus of proof upon him and, in the absence of **positive evidence**, should be avoided. However, when setting out reasons **why**, for example, he was not satisfied on a particular point, he may assert eg "I had reason to believe" (but he must have set out what that reason was).

8. FINAL SECTION OF THE STATEMENT

At the end of the statement, the immigration officer should quote the reasons for refusal. Those quoted in the statement must accord with those given in the notice of refusal served on the passenger or with any amended reasons given in a letter as outlined in **Section 1 "Adverse decisions - general guidance"** to this chapter. **Any discrepancies between the two will be brought out at appeal.**

It should be recorded that the immigration officer obtained the authority of a chief immigration officer to refuse leave to enter (quoting that officer's name), and proceeded to refuse, giving due notice under a particular part of the Immigration Act 1971 and in accordance with particular paragraphs of the Rules.

Finally, the immigration officer should address the grounds of appeal, submitted by the appellant or his representative, on form IS 87, if any. In many cases, it will be appropriate to state merely that, having reviewed the case in the light of the grounds for appeal, he could see no reason to reverse his decision. Where appropriate, however, in particular where new facts are raised, he should give an explanation as to why he was not persuaded to change the decision.

9. DOCUMENTS TO BE APPENDED TO THE EXPLANATORY STATEMENT

A copy of the refusal notice and of the notice of appeal should always be appended to an appeal statement. In addition, a copy of any of the following documents should be attached:

- * where the appellant holds a current entry clearance, a copy of the application form, the entry clearance officer's interview record and any supporting documents to the application must accompany the statement;
- * any unpublished documents referred to in the text of the statement (including those which support hearsay evidence);
- * any documents submitted by the appellant with his notice of appeal;

Note: A translation must be provided of any document in a foreign language appended to the statement.

The documents appended should be listed at the end of the statement.

10. SUMMARY OF INFORMATION TO BE INCLUDED IN AN EXPLANATORY STATEMENT

1. Language used. Whether interpreter used, name, language, qualification. Always include the fact that the passenger understood the questions and was fit and well (if he was asked).
2. Passenger's initial story. Details of proposed contacts here, funds, tickets etc.
3. Details of proposed sponsor (eg how long known and where first met). Evidence of sponsorship.
4. Passenger's background, home circumstances, country of residence if outside native country, details of employment/studies. Previous travel details.
5. Further enquiries made and results obtained.
6. Conclusions drawn from further enquiries. Passenger's responses to results of enquiries (natural justice).
7. Quotation of Rules and why not satisfied passenger qualified for entry in accordance with them. Reference to CIO (and Inspector, if necessary).

Wording given on notice of decision IS 82. Refer to refusal in accordance with Immigration Act and Rules.

8. Any further relevant developments. Address any new information or arguments raised by the passenger in his grounds for appeal (form IS 87).
9. All relevant documents to be copied and listed as appendices to the statement.

REMEMBER: Any information for outside agencies or not for public disclosure must not be included in the statement but on a separate addendum.