

This guidance is based on the Immigration Rules.



# Alvi judgement – how to handle cases

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Guidance for caseworkers on deciding applications, responding to legal challenges and reconsideration requests

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## Alvi judgement – how to handle cases

### About this guidance

[Alvi – impact on the Immigration Rules Undecided applications and future applications Tier 1 \(Post-study work\) applications In time appeals, judicial reviews or pre-action protocols Cases where a reconsideration request has been received](#)

This guidance tells caseworkers how to handle applications for leave affected by the Alvi judgement. The guidance also covers how to handle challenges to decisions based on the Alvi judgement.

The UK Supreme Court’s judgement in Alvi, given on 18 July 2012, established the following general principle:

‘Any requirement which, if not satisfied by the migrant, will lead to an application for leave to enter or remain being refused is a rule within the meaning of section 3(2) [of the 1971 Immigration Act]’.

This means any requirements must be agreed by Parliament. This agreement is gained by putting the requirements into the Immigration Rules. After the Alvi judgement, it is unlawful to refuse an application on the basis of requirements not included in the Immigration Rules.

The Home Office must fully implement the court’s findings. This guidance tells you how to deal with cases in a way that complies with the judgement.

This guidance tells you how to:

- Casework applications that have not yet been decided and future applications.
- Deal with existing in-time appeals, judicial review proceedings and pre-action protocol letters.
- Deal with any out-of-time appeals, judicial review proceedings and pre-action protocol letters.
- Respond to reconsideration requests based on the Alvi judgement.

Changes to this guidance – This page tells you what has changed since the previous version of this guidance.

**In this section**  
[Changes to this guidance](#)

[Contact](#)

[Information owner](#)

**Related links**  
Links to staff intranet removed

**External links**  
[Immigration Rules](#)

[Alvi judgement](#)

[1971 Immigration Act](#)

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	<p>Contacts – This page tells you who to contact for help if your senior caseworker or line manager can't answer your question.</p> <p>Information owner – This page tells you about this version of the guidance and who owns it.</p> <p>Safeguard and promote child welfare – This page explains your duty to safeguard and promote the welfare of children and tells you where to find more information.</p>	
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### Changes to this guidance

<p><a href="#">Alvi – impact on the Immigration Rules Undecided applications and future applications Tier 1 (Post-study work) applications</a>  <a href="#">In time appeals, judicial reviews or pre-action protocols</a>  <a href="#">Cases where a reconsideration request has been received</a></p>	<p>This page lists changes to the Alvi judgement – how to handle cases guidance, with the most recent at the top.</p>		<p><b>Related links</b></p> <p><b>See also</b>  <a href="#">Contact</a></p> <p><a href="#">Information owner</a></p> <p>Links to staff intranet removed</p> <p><b>External links</b>  <a href="#">Immigration Rules</a>  <a href="#">Alvi judgement</a>  <a href="#">1971 Immigration Act</a></p>					
	<table border="1"> <thead> <tr> <th data-bbox="450 469 831 512">Date of the change</th> <th data-bbox="831 469 1532 512">Details of the change</th> </tr> </thead> <tbody> <tr> <td data-bbox="450 512 831 699">16 October 2013</td> <td data-bbox="831 512 1532 699"> <p>Six month review by the modernised guidance team:</p> <ul style="list-style-type: none"> <li>• Minor housekeeping changes.</li> </ul> </td> </tr> </tbody> </table>	Date of the change		Details of the change	16 October 2013	<p>Six month review by the modernised guidance team:</p> <ul style="list-style-type: none"> <li>• Minor housekeeping changes.</li> </ul>	<table border="1"> <tbody> <tr> <td data-bbox="831 699 1532 1260"> <p>2 September 2013</p> <p>Change request:</p> <ul style="list-style-type: none"> <li>• Cases where a reconsideration request has been received:                             <ul style="list-style-type: none"> <li>○ sub-heading ‘Requests which do not relate to the most recent application’, sub-heading and content deleted</li> <li>○ sub-heading ‘Reconsideration requests which relate to a decision made before 20 June 2012 and which were made while the migrant is out of time to bring a legal challenge’, new second paragraph</li> </ul> </li> <li>• Minor housekeeping changes.</li> </ul> </td> </tr> </tbody> </table>	<p>2 September 2013</p> <p>Change request:</p> <ul style="list-style-type: none"> <li>• Cases where a reconsideration request has been received:                             <ul style="list-style-type: none"> <li>○ sub-heading ‘Requests which do not relate to the most recent application’, sub-heading and content deleted</li> <li>○ sub-heading ‘Reconsideration requests which relate to a decision made before 20 June 2012 and which were made while the migrant is out of time to bring a legal challenge’, new second paragraph</li> </ul> </li> <li>• Minor housekeeping changes.</li> </ul>
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<p>For previous changes to this guidance you will find all earlier versions in the archive. See related link: <a href="#">Alvi judgement - archive</a>.</p>								

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## Alvi judgement – how to handle cases

### Alvi – impact on the Immigration Rules

<p><a href="#">Alvi – impact on the Immigration Rules Undecided applications and future applications Tier 1 (Post-study work) applications</a></p> <p><a href="#">In time appeals, judicial reviews or pre-action protocols</a></p> <p><a href="#">Cases where a reconsideration request has been received</a></p>	<p>This page explains how the Alvi judgement affected the Immigration Rules and how the Home Office has changed the rules to implement the judgement.</p> <p><b>Which application requirements must be in the Immigration Rules?</b> Any requirements that must be met by the applicant in order for an application to be granted.</p> <p><b>Example A</b> A Tier 4 applicant must demonstrate they meet the requirements of paragraphs 118-120, Appendix A of the Immigration Rules by providing specified documents.</p> <p>The application will be refused if the applicant:</p> <ul style="list-style-type: none"><li>• Does not provide all of the specified documents. Or</li><li>• Provides other documentation as evidence of meeting the requirements of paragraphs 118-120 but those documents are not the same as the specified documents. For example, if the applicant provides a reference that is undated and does not provide contact details for the referee.</li></ul> <p>The requirement to provide specified documents must be in the rules in order to lawfully refuse applicants for this reason. The rules have been amended to specify the documents an applicant must provide, see paragraph 120-SD, of the related link: Appendix A of the Immigration Rules.</p> <p><b>Example B</b> For an applicant to be granted leave to enter as a partner, their application must meet the requirements of E-ECP.2.6, Appendix FM of the Immigration Rules. This requires the relationship between the applicant and their partner to be ‘genuine and subsisting’.</p> <p>The guidance (Annex FM, section FM.2.1, IDI, see related link: 2.1- Eligibility, registration,</p>	<p><b>Related links</b> <a href="#">Contact</a></p> <p>Links to staff intranet removed</p> <p><b>External links</b> <a href="#">Immigration Rules</a> <a href="#">Alvi judgement</a> <a href="#">1971 Immigration Act</a></p> <p><a href="#">July 20 changes to Immigration Rules</a></p> <p><a href="#">Appendix A of the Immigration Rules</a></p> <p><a href="#">Appendix FM of the Immigration Rules</a></p>
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dissolution and glossary terms) sets out factors that 'may be associated with a genuine and subsisting relationship'. The factors listed in the guidance are not comprehensive. An applicant may be able to demonstrate they have a genuine and subsisting relationship by relying on other factors which do not appear in the guidance and relying on factors outside the guidance is not a basis for refusal.

In this case the rules do not need to be amended because there is no requirement outside the rules that would result in an application being refused.

**Why were the Immigration Rules amended following the judgement?**

Urgent changes to the Immigration Rules were laid before Parliament on 19 July 2012 and came into force on 20 July 2012. These first changes relate only to the points-based system, the visitor routes and the new family rules. The changes incorporated requirements into the rules previously only contained in guidance or other documents.

Further changes to the Immigration Rules were laid on 5 September 2012 and came into force on 6 September 2012.

To see the changes, see related link: [July 20 changes to Immigration Rules](#).

**Contact**

If you have a question about whether a particular provision in guidance is a requirement and therefore should be incorporated into the Immigration Rules, see related links: [Contact](#).

Restricted – do not disclose – start of section

The information in this page has been removed as it is restricted for internal Home Office use only.

Restricted – do not disclose – end of section

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## Alvi judgement – how to handle cases

### Undecided applications and future applications

[Alvi – impact on the Immigration Rules Undecided applications and future applications Tier 1 \(Post-study work\) applications In time appeals, judicial reviews or pre-action protocols Cases where a reconsideration request has been received](#)

This page explains how you must now casework undecided and future applications affected by the Alvi judgement.

#### **What is the effect of the Alvi judgement on the requirements that applicants must meet?**

The changes to the Immigration Rules in response to the Alvi judgement incorporate requirements into the rules that have always been imposed on applicants, but were previously in guidance or external documents rather than the rules themselves.

Therefore these changes have not altered the:

- requirements an applicant must meet for an application to succeed, or
- process you must follow when considering and deciding applications.

#### **Considering applications**

You must decide applications by applying the Immigration Rules, as amended on 20 July and 6 September 2012, in force on the date the application is decided.

#### **Refusal notices for decisions made on or after 20 July 2012**

In the refusal notice you must:

- only refer to the relevant Immigration Rule or rules the application did not meet, and
- not refer to requirements only stated in guidance as reasons for refusal.

#### **Related links**

##### **External links**

[Immigration Rules](#)

[Alvi judgement](#)

[1971 Immigration Act](#)

[July 20 Changes to Immigration Rules](#)

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## Alvi judgement – how to handle cases

### Tier 1 (Post-study work) applications

[Alvi – impact on the Immigration Rules Undecided applications and future applications Tier 1 \(Post-study work\) applications In time appeals, judicial reviews or pre-action protocols Cases where a reconsideration request has been received](#)

This page explains how to consider Tier 1 (Post-study work) applications to make sure they comply with the Alvi judgement.

#### Why aren't the Immigration Rules for Tier 1 (Post-study work) applications going to be amended?

Applicants who:

- applied before the Tier 1 (Post-study work) route closed, and
- have an outstanding application

will have their applications decided under the rules in force at the time they applied. A commitment was made when the Tier 1 (Post-study work) route was closed that there would be no change to the rules for those applications. Therefore any amendment to those rules, even if only to incorporate existing guidance provisions, is against that commitment.

For Tier 1 (Post-study work) applications you must only consider applications against the requirements set out in the rules. Applicants must demonstrate they meet the requirements of the rules. The applicant may demonstrate this by providing evidence other than that specified in the guidance. You must consider any evidence provided with the application and grant leave if the evidence demonstrates that, on the balance of probabilities, the requirements of the rules are met.

#### Considering Tier 1 (Post-study work) applications

If an applicant does not provide evidence, as specified in the published policy guidance, you must review the evidence provided to identify if there is enough information to qualify for a grant of leave under the route.

The evidence must demonstrate the applicant scores 75 points for their attributes, as set out in Appendix F of the Immigration Rules and in the Tier 1 (Post-study work) policy guidance.

#### Related links

Links to staff intranet removed

#### External links

[Immigration Rules](#)

[Alvi judgement](#)

[1971 Immigration Act](#)

[Immigration Rules Appendix F](#)

[Tier 1 \(Post-study work\) policy guidance](#)

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The applicant must score points in all four areas. Award points to the applicant as follows:

- 20 points if the evidence demonstrates they were awarded either:
  - a UK recognised bachelors degree, masters degree or PhD
  - a UK postgraduate certificate in education, or a professional graduate diploma of education, or
  - a Higher National Diploma (HND) from a Scottish institution.
- 20 points if the evidence demonstrates they either:
  - studied for the eligible award at a UK institution that is a UK recognised or listed body, or holds a sponsor licence under Tier 4 of the points-based system, or
  - are claiming points for having been awarded an HND at a Scottish publicly funded institution of further or higher education, or at a Scottish bona fide (genuine) private education institution which maintains satisfactory records of enrolment and attendance.
- 20 points if the evidence demonstrates their period of UK study and/or research towards their eligible award was undertaken while they had entry clearance, leave to enter or remain in the UK that was not subject to a restriction preventing them from undertaking a course of study and/or research.
- 15 points if the evidence demonstrates their application for leave to remain as a Tier 1 (Post-study work) migrant was made within 12 months of:
  - obtaining the eligible qualification, or
  - completing a UK foundation programme office affiliated foundation programme as a postgraduate doctor or dentist.

If, on the balance of probabilities, you are satisfied enough evidence has been provided to show the applicant scores enough points against each of the requirements listed above, you must award the applicant 75 points under Appendix A and 10 points under Appendix B of the Immigration Rules.

If you have any concerns about whether any evidence provided can be accepted, you must discuss the application with your senior caseworker or line manager.

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### In time appeals, judicial reviews or pre-action protocols

[Alvi – impact on the Immigration Rules Undecided applications and future applications Tier 1 \(Post-study work\) applications In time appeals, judicial reviews or pre-action protocols Cases where a reconsideration request has been received](#)

This section explains when you must reconsider cases where an appeal or a judicial review (JR) has already started for cases affected by the Alvi judgement.

You may need to concede individual cases that were stayed, pending the Supreme Court Alvi judgement, as well as other existing cases in which Alvi was raised. Other cases may have their grounds amended to include this ground of challenge. The basis of the challenge to the refusals is they are not in line with the law because they were based on the applicant failing to meet a requirement stated only in guidance and not in the Immigration Rules.

#### **What approach must be taken to these cases?**

You must consider any case in which it is argued that Alvi applies, as set out below. This approach applies to both appeals and judicial review challenges.

#### **Is there evidence (not limited to ‘specified evidence’) that the appellant or claimant meets the requirements of the rules pre-20 July 2012?**

In these cases you must withdraw the decision and reconsider the case.

If it is clear the appellant or claimant meets the requirements of the rules (even if they did not provide specified evidence), you must grant leave, unless the application must be refused on general grounds, see related link: General grounds for refusal. You must not refuse an application on the grounds that specified evidence set out in guidance has not been provided.

For more guidance on reconsidering the case and which Immigration Rules to apply, see related link: Referring to requirements outside the rules.

#### **If you reverse the original decision when there is a pending appeal or JR**

If you grant leave in a case with a pending appeal, this will stop the appeal, and you must inform the tribunal service immediately. You must contact the relevant court by letter, or fax if it is within seven days of the hearing. You must also notify the relevant presenting officers

#### **In this section**

[Referring to requirements outside the rules](#)

[Reconsiderations following appeals, JRs and pre-action protocols](#)

#### **Related links**

Links to staff intranet removed

#### **External links**

[Immigration Rules](#)

[Alvi judgement](#)

[1971 Immigration Act](#)

[Asylum and Immigration Tribunal \(Procedures\) Rules 2005](#)

[Appendix C of the Immigration Rules](#)

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	<p>unit.</p> <p>The appeals screen on CID will identify the relevant court or presenting officer unit for all cases already listed for a hearing.</p> <p>If the court hearing the appeal is not on the CID appeals screen, you must call the Immigration and Asylum Chamber (IAC) general helpline to find out where the appeal is located. The telephone number is 0300 123 1711.</p> <p>For more information on informing the tribunal, see rule 17(2) in the related link: Asylum and Immigration Tribunal (Procedures) Rules 2005.</p> <p>If you withdraw a decision that is being challenged by a judicial review, you must inform the judicial review unit and treasury solicitors (TSOLs).</p> <p>For more information about judicial reviews, see related link: IDI chapter 27: Judicial review.</p>	
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### Referring to requirements outside the rules

[Alvi – impact on the Immigration Rules Undecided applications and future applications Tier 1 \(Post-study work\) applications In time appeals, judicial reviews or pre-action protocols Cases where a reconsideration request has been received](#)

This page tells you which Immigration Rules you must use to reconsider decisions that referred to requirements outside the rules for appeals, judicial reviews or pre-action protocols, following the Alvi judgement.

#### **Is it possible to apply the rule the refusal is being challenged under without referring to the requirement outside the rules?**

If you can, you must apply the pre-20 July 2012 Immigration Rules when reconsidering the decision.

An example of such a rule is the requirement in paragraph 5(a) Appendix C that a Tier 2 migrant must meet the maintenance requirement of £900, see related link: Appendix C of the Immigration Rules.

Before the 20 July rules change, this rule stated the applicant must demonstrate they met this requirement by providing specified evidence. Following Alvi, the rule can still be applied but the specified evidence requirement can no longer be imposed. So the applicant must still possess the £900 but the evidence they can use to show this will not be limited to the specified evidence. If the applicant provides evidence that demonstrates they have £900 then this requirement is met.

If it is possible to apply the rule in this way, you must consider if the appellant or claimant provided any evidence to show they met the requirement in question. If no evidence was provided, you must defend the refusal on the basis the requirement of the rule was not met. You can not defend the decision if evidence, including non-specified evidence, was provided and it showed the requirement of the rule was met.

If the decision being challenged can no longer be defended it must be withdrawn and the application reconsidered. If the rules in force on the date of the decision were met you must grant leave, unless the application must be refused on general grounds, see related link.

**Related links**  
[Reconsiderations following appeals, JRs and pre-action protocols](#)

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**External links**  
[Appendix C of the Immigration Rules](#)

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If the original application was made in time and it is possible to apply the rule in force at the time the application was made, the applicant must be treated as having 3C leave until the reconsideration is completed. For any future settlement application, the applicant must be treated as having valid leave from the time of the original decision to refuse. This must be made clear in the decision letter you issue to the applicant when granting leave.

**Is it impossible to apply the rule in question without referring to the requirement outside the rules?**

If it is, you must apply the current Immigration Rules when reconsidering the decision.

The Alvi judgement states it is unlawful for an applicant to have to satisfy requirements that are not contained in the Immigration Rules (that is requirements that are in guidance). So, if the original rule does not make sense or cannot be applied without reference to requirements outside the Immigration Rules, that original rule is no longer workable and the application cannot be reconsidered by applying that rule. The application must therefore be reconsidered under the rules in force on the date the application is reconsidered.

An example of such a rule is the requirement that no points are awarded for sponsorship unless the certificate of sponsorship (COS) shows the person is being sponsored to do a job that appears on the Home Office list of skilled occupations. It is impossible to determine what the requirement is and therefore whether it is met without referring to material that was, at the time of the decision, outside the rules.

If it is impossible to apply the rule because the requirements were only in the guidance you must concede the appeal or allow the judicial review (JR). You must say the Secretary of State for the Home Department (SSH) will remake the decision under the Immigration Rules in place after 20 July 2012.

If this paragraph applies and the application succeeds under the current Immigration Rules, you cannot treat the application as if it had been successful from the original decision date. It is not possible to assume the application would or would not have succeeded because, under the current state of the law following Alvi, it is no longer possible to apply that rule lawfully. You must grant leave from the date you reconsider the decision, not from the date

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	of the original decision. If the applicant made an in-time application, they are covered by 3C leave until the date on which a lawful decision is made, so there will not be a gap in their leave.	
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## Alvi judgement – how to handle cases

### Reconsiderations following JRs and pre-action protocols

[Alvi – impact on the Immigration Rules Undecided applications and future applications Tier 1 \(Post-study work\) applications](#)  
[In time appeals, judicial reviews or pre-action protocols](#)  
[Cases where a reconsideration request has been received](#)

This page tells you how to reconsider cases affected by the Alvi judgement where an appeal, judicial review or pre-action protocol has been lodged, to decide if the case should be defended or conceded.

#### **What approach must be taken where a refusal needs to be reconsidered but the route has since closed, for example Tier 1 (General) and Tier 1 (Post-study work)?**

For the approach to Tier 1 (Post-study work) applications, see link on left.

For Tier 1 (General), see link on left: In time appeals, judicial reviews or pre-action protocols. You must take the approach set out under the heading: What approach must be taken to these cases?

If the original decision was made referencing requirements stated only in guidance the decision must be remade under the current rules. If the rule in question cannot be applied without referring to requirements outside the rules, the application must be refused as there is no equivalent type of leave in the new rules.

If the original decision was based on requirements stated in the pre-20 July 2012 rules, without reference to guidance, you must maintain the refusal under those rules.

#### **What approach must be taken where a refusal needs to be reconsidered where the route has not closed?**

See link on left: In time appeals, judicial reviews or pre-action protocols and follow instructions under the heading: What approach must be taken to these cases? This sets out how to reconsider the case and whether to reconsider an application under the pre-20 July 2012 rules or under the post-20 July 2012 rules.

#### **Is the applicant required to pay a fee for this reconsideration?**

No. You must not request a fee for this reconsideration. The Secretary of State for the Home Department (SSHD) has agreed the original decision needs to be re-examined and therefore

#### **Related links**

[Referring to requirements outside the rules](#)

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	<p>the fee has already been paid.</p> <p><b>Can the applicant submit new evidence?</b> No. The applicant is not making a new application so new evidence can not be submitted.</p> <p>If an applicant wishes to make a new application and submit new evidence, they must complete and submit the correct application form and pay the fee.</p> <p><b>Is the SSHD liable to pay damages for any loss incurred by an individual because of the original refusal?</b> No. The SSHD is not liable to pay damages in this situation. Damages are only paid if a public law error has occurred as a result of negligence, misfeasance in public office (the claim that the SSHD misused their power in refusing the application) or a breach of the Human Rights Act. None of these apply.</p>	
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## Alvi judgement – how to handle cases

### Cases where a reconsideration request has been received

<p><a href="#">Alvi – impact on the Immigration Rules Undecided applications and future applications Tier 1 (Post-study work) applications In time appeals, judicial reviews or pre-action protocols Cases where a reconsideration request has been received</a></p>	<p>This section tells you how you must respond to reconsideration requests from people who claim the decision of their application is unlawful because of the Alvi judgement, but have not yet lodged an appeal, judicial review (JR) or pre-action protocol.</p> <p><b>Are refusals made on the basis of requirements ruled unlawful by Alvi (requirements outside the rules at the time of decision) now unlawful, even where the time to bring a judicial review or appeal has expired?</b></p> <p>These decisions are lawful unless and until they are quashed in JR proceedings or successfully appealed.</p> <p><b>Requirements for reconsideration requests</b></p> <p>To be valid the reconsideration request must:</p> <ul style="list-style-type: none"><li>• be submitted in writing</li><li>• be sent to the Home Office by the original applicant or their legal representative</li><li>• explain why the decision might be incorrect or inconsistent with existing policy, stating which of the following errors was made and why:<ul style="list-style-type: none"><li>○ the decision failed to take account of, or misinterpreted, relevant evidence submitted to the Home Office before the date of the decision, and/or</li><li>○ the decision was not in line with relevant law, policy or guidance.</li></ul></li></ul> <p>The applicant cannot submit:</p> <ul style="list-style-type: none"><li>• More than one request for reconsideration of the same decision.</li><li>• New evidence to support the qualifying requirements for their application. You must not consider new evidence as part of the reconsideration process. It must instead be raised as part of a new application, unless it:<ul style="list-style-type: none"><li>○ provides new evidence which proves the date of application</li><li>○ provides new evidence that documents provided with the original application were</li></ul></li></ul>	<p><b>In this section</b></p> <p><a href="#">Requests to extend time for bringing JR or appeal hearings</a></p> <p><a href="#">Exceptional circumstances and detention, removals and detention</a></p> <p><b>Related links</b></p> <p>Links to staff intranet removed</p> <p><b>External links</b></p> <p><a href="#">Immigration Rules</a></p> <p><a href="#">Alvi judgement</a></p> <p><a href="#">1971 Immigration Act</a></p>
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- genuine, or
- o identifies evidence, received by the Home Office before the decision date, but not available to the caseworker when they made their original decision

where these details impact upon the decision and/or any subsequent appeal rights.

A reconsideration request will not be considered if the migrant subsequently leaves the UK.

#### **Verbal request**

This is not a valid reconsideration request. If the migrant is seeking to challenge a decision which can be reconsidered in line with this guidance you must advise the migrant to put their request in writing and send it to the team which made the original decision.

#### **Reconsideration requests relating to a decision made on or after 20 June 2012**

From 20 June 2012 all immigration decisions were made on the basis of Alvi compliant rules. Therefore, you must reject any request for an Alvi grounds reconsideration of a decision which was made on or after 20 June 2012, regardless of whether it is made within the timescale for a legal challenge.

#### **Reconsideration requests which relate to a decision made before 20 June 2012 and which were made while the migrant could have still brought an in-time legal challenge**

If a person wrote to request reconsideration and was still within the deadlines for bringing an in-time legal challenge, you must review the representations made in the reconsideration request.

For applications refused with a right of appeal, the deadline for submitting an in-time appeal is 10 working days from the deemed date of receipt of the decision notice.

The deadline for bringing in-time JR proceedings is three months from the deemed date of receipt of the decision notice. A notice is deemed to have been received two working days after the Home Office sent it, unless there is evidence to prove a later delivery date.

You must maintain the decision following reconsideration if it could be successfully defended

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at appeal or JR. You must inform the person in writing that the decision has been maintained on reconsideration.

For guidance on reconsidering the decision see link on left: In time appeals, judicial reviews or pre-action protocols.

**Reconsideration requests which relate to a decision made before 20 June 2012 and which were made while the migrant is out of time to bring a legal challenge**

You must refuse any request for reconsideration where the person has missed the deadline to bring an appeal or JR, unless there are exceptional circumstances (see link in this section).

This means you must reject any reconsideration request based on Alvi grounds sent on or after 22 September 2012. The only exception is where there is evidence the decision notice was received after 21 June 2012. In this case you must calculate the three month period from the date on which the migrant actually received the notice.

**What response must be given to requests for reconsideration that are rejected?**

You must refuse the reconsideration request, using the Alvi reconsideration request rejection letter template, see related link. The letter explains there is no legal obligation to reconsider cases which were lawfully decided at the time of decision.

If the:

- individual is out of time to bring a legal challenge, and
- reconsideration request suggests a legal challenge is being considered

you must include the optional paragraphs regarding delay and administrative inconvenience.

If you reject the reconsideration request, the applicant must make a new application for leave under the current Immigration Rules, paying the appropriate fee, if they still want the Home Office to consider granting them leave.

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## Alvi judgement – how to handle cases

### Requests to extend time to bring JR or appeal hearings

[Alvi – impact on the Immigration Rules Undecided applications and future applications Tier 1 \(Post-study work\) applications](#)  
[In time appeals, judicial reviews or pre-action protocols](#)  
[Cases where a reconsideration request has been received](#)

This page tells you about the reasons why the Home Office believes a court or tribunal should not extend the time for bringing a judicial review or appeal hearing for cases following the Alvi judgement.

#### **Why should the court or tribunal refuse an application to extend time for bringing judicial review or appeal proceedings?**

The court or tribunal needs to give permission to bring proceedings out of time. When the court or tribunal exercises discretion to extend time to bring proceedings, it must take into account the:

- reasons for the delay, and
- administrative inconvenience caused by allowing out-of-time appeals or judicial reviews to proceed.

There is no good reason for the delay in these cases. Saying proceedings could not have been brought earlier because a basis for challenge was only apparent since the Alvi judgement is not a good reason for delay.

Regarding the administrative inconvenience, if all Alvi-related refusals had to be revisited, this would place an unreasonable administrative burden on the Home Office.

**Related links**  
[Exceptional circumstances and detention, removals and enforcement](#)

This guidance is based on the Immigration Rules.

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### Exceptional circumstances and detention removals and enforcement

[Alvi – impact on the Immigration Rules Undecided applications and future applications Tier 1 \(Post-study work\) applications In time appeals, judicial reviews or pre-action protocols Cases where a reconsideration request has been received](#)

This page tells you when it might be appropriate to reconsider an Alvi case exceptionally and the effect of the Alvi judgement on the legality of detention, removals and enforcement action.

#### Exceptional circumstances

If the refusal to reconsider has an exceptionally harsh consequence for the person, you must consider if it is appropriate to grant leave outside the rules.

You must consider each case, where it is alleged exceptional circumstances exist, on its merits. This is because what constitutes exceptionally harsh circumstances depends on the particular individual facts of the case.

Examples of when it might be exceptionally harsh to refuse a reconsideration may be when:

- serious illness
- difficult personal circumstances, or
- other factors entirely outside the individual's control

contribute to the reasons why the individual is not eligible for reconsideration. For example by preventing the individual from lodging an in-time appeal or judicial review (JR).

Restricted – do not disclose – start of section

The information in this page has been removed as it is restricted for internal Home Office use only.

Restricted – do not disclose – end of section

**What is the effect of the Alvi judgement on the legality of detention, removals and enforcement action?**

#### Related links

[Requests to extend time for bringing JR or appeal hearings](#)

This guidance is based on the Immigration Rules.

	Alvi has no effect on the legality of detention, removals and enforcement except if the refusal forming the basis of the power to detain, remove or take enforcement action is withdrawn or quashed, following successful appeal proceedings or JR.	
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This guidance is based on the Immigration Rules.

## Alvi judgement – how to handle cases

### Contact

<p><a href="#">Alvi – impact on the Immigration Rules Undecided applications and future applications Tier 1 (Post-study work) applications</a> <a href="#">In time appeals, judicial reviews or pre-action protocols</a> <a href="#">Cases where a reconsideration request has been received</a></p>	<p>This page explains who to contact for more help with a specific case affected by the Alvi judgement.</p> <p>If you have read the relevant Immigration Rules and this guidance and still need more help with this category, you must first ask your senior caseworker or line manager.</p> <p>If the question can't be answered at that level, you may email the administrative operational policy team using the related link, for guidance on the policy.</p> <p>Changes to this guidance can only be made by the modernised guidance team (MGT). If you think the policy content needs amending you must contact the administrative operational policy team, who will ask the MGT to update the guidance, if appropriate.</p> <p>The MGT will accept direct feedback on broken links, missing information or the format, style and navigability of this guidance. You can send these using the link: Email: Modernised guidance team.</p>	<p><b>Related links</b> <a href="#">Changes to this guidance</a> <a href="#">Information owner</a></p> <p>Links to staff intranet removed</p>
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## Alvi judgement – how to handle cases

### Information owner

[Alvi – impact on the Immigration Rules Undecided applications and future applications Tier 1 \(Post-study work\) applications In time appeals, judicial reviews or pre-action protocols Cases where a reconsideration request has been received](#)

This page tells you about this version of the Alvi judgement – how to handle cases guidance and who owns it.

Version	5.0
Valid from date	16 October 2013
Policy owner	Administrative operational policy team
Cleared by director	Sonia Dower
Director's role	Director, operational policy and rules
Clearance date	6 September 2012
This version approved for publication by	Richard Short
Approver's role	Grade 7, modernised guidance team
Date of approval	14 October 2013

Changes to this guidance can only be made by the modernised guidance team (MGT). If you think the policy content needs amending you must contact the administrative operational policy team, who will ask the MGT to update the guidance, if appropriate.

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**Related links**  
[Changes to this guidance](#)

[Contact](#)

Links to staff intranet removed