

Justice and Home Affairs

Customs and Immigration Service

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Policy Statement

Review of Immigration Decisions made in Jersey

1 Introduction

- 1.1 This document describes how to apply for a review of an immigration decision taken in Jersey relating to entry clearance, leave to enter and leave to remain applications made under the Jersey Immigration Rules. The document also describes the procedure that will be followed by the States of Jersey Customs and Immigration Service (“the Service”) in such cases. There are no specific provisions in Jersey immigration law to appeal an adverse immigration decision but applicants may ultimately seek leave of the Bailiff to apply to the Royal Court for Judicial Review of a decision of any public authority or body.
- 1.2 The Minister for Home Affairs has overall responsibility for immigration matters in the Island.

2 Legal Background

- 2.1 Decisions concerning the admission of foreign nationals to Jersey are made by Immigration Officers acting under the provisions of:
 - a. the Immigration Act 1971, as extended to the Bailiwick by the Immigration (Jersey) Order 1993 and the Immigration (Jersey) (Amendment) Order 2017 (“the 1971 Act”); and
 - b. the Jersey Immigration Rules laid down by directions of the Minister for Home Affairs under the 1971 Act (“the Jersey Immigration Rules”).
- 2.2 Paragraph 1(3) of Schedule 2 to the 1971 Act requires Immigration Officers to act in accordance with directions given to them by the Minister for Home Affairs, in respect of the entry of persons into Jersey and the period for which such persons may remain.
- 2.3 The Human Rights (Jersey) Law 2000, which incorporates the European Convention on Human Rights into Jersey law, makes it unlawful for a public authority to act incompatibly with the Convention rights.
- 2.4 The standard of proof for consideration of applications for entry clearance and leave to remain is the balance of probabilities test (but see paragraph 2.5 below). The balance of probabilities test means that on consideration of all the evidence there is more evidence in favour of one decision than the other.
- 2.5 For decisions made under Part 9 Section 2 of the Jersey Immigration Rules (Grounds for refusal, or cancellation, of entry clearance, leave to enter and leave to remain), and where the Immigration Officer has evidence that the applicant has used deception, made a false statement or given false information, the standard of proof is to a higher degree of probability. In order to maintain a Part 9 Section 2 decision, therefore, the Senior Manager reviewing the decision requires positive evidence that an applicant has used deception or false representations, or that a document that the applicant has submitted is false.

3 Which adverse immigration decisions may be reviewed?

3.1 For the purposes of this policy an 'immigration decision' means:

- refusal of leave to enter Jersey;
- refusal of entry clearance;
- refusal to vary a person's leave to enter or remain in Jersey if the result of the refusal is that the person has no leave to enter or remain;
- variation of a person's leave to enter or remain in Jersey if when the variation takes effect the person has no leave to enter or remain;
- revocation of indefinite leave to enter or remain in Jersey;
- a decision to remove a person from Jersey.

3.2 Decisions which are not immigration decisions, and which will not be reviewed for the purposes of this policy, include:

- refusal to grant a work permit;
- the imposition of conditions of leave, or refusal to revoke conditions;
- refusal to grant leave to a person who had no leave at the date of the application.

3.3 Applications **for entry clearance** in the following immigration categories will only be reviewed under this policy on a limited (or 'residual') basis on human rights grounds:

- a. Visitors under Appendix V(J): Visitor of the Jersey Immigration Rules;
- b. United Kingdom Points Based System categories, as recognised in Jersey (Ministers of Religion and Youth Mobility Scheme);
- c. Dependants applying at the same time as the principal applicant, when the principal applicant is refused;
- d. Refusal under Part 9 Section 2 paragraphs 9.2.1 to 9.4.5 and 9.9.1. to 9.10.2. of the Jersey Immigration Rules (Grounds for refusal, or cancellation, of entry clearance, leave to enter and leave to remain).

3.4 Applications for entry clearance in all other immigration categories will attract a full right of review in accordance with paragraph 4.1 *below*.

3.5 Most passengers who are refused entry to Jersey at a **port of entry** may ask for this decision to be reviewed under this policy. However, whether the review will be limited to residual human rights grounds only, or whether the passenger will be required to return abroad, will depend on the documents presented by the passenger and their validity:

- a. Only someone presenting a valid passport containing a correctly-issued entry clearance ("EC") , valid for the purpose for which entry is sought, will qualify to lodge a request for review of an immigration decision in-country.
- b. Anyone seeking entry with an entry clearance , which the Immigration Officer determines is not valid for the purpose for which entry is sought, and whose leave is cancelled by an immigration officer, may lodge a request for review of the immigration decision from abroad only. There must be clear evidence that the passenger's purpose of stay is different to that stated on the EC (*e.g.* if a person holding a visit visa is found to be in possession of a letter of enrolment from a college or an employer's letter).

If no clear evidence of an alternative purpose exists, and the passenger's leave is cancelled on grounds of change of circumstances or misrepresentation rather than change of purpose, the passenger may apply for a review of the immigration decision in country.

- c. Should the passenger admit to a change of purpose (*i.e.* that the passenger intends to do something different to the purpose specified on the EC) the decision will only be reviewed under this policy on a limited (or 'residual') basis on human rights grounds.

Likewise, if the holder of the EC does not satisfy certain criteria, the holder's right to a review under this policy, from abroad, will be limited to human rights grounds only. The criteria to be satisfied are that the holder

- satisfies all the requirements as to age, nationality, or citizenship for the category as specified in the Jersey Immigration Rules;
- holds all valid immigration documents necessary for the purpose for which the holder is seeking entry;
- seeks to be in Jersey for a period within that permitted by the Jersey Immigration Rules;
- has supplied a medical report or medical certificate in accordance with a requirement of the Jersey Immigration Rules.

d. Anyone who does not have an EC, whether mandatory or not, only has a limited right of review under this policy against refusal, from abroad, on residual human rights grounds.

4 Grounds for applying for a review of an immigration decision under this policy

4.1 An applicant may apply to have an immigration decision reviewed on the grounds that:

- a. the decision is not in accordance with the Jersey Immigration Rules;
- b. the decision is unlawful because it is incompatible with a right under the European Convention on Human Rights;
- c. the decision breaches Jersey's obligations under the 1951 United Nations Convention relating to the Status of Refugees;
- d. the decision is otherwise not in accordance with the law;
- e. a discretion under the Jersey Immigration Rules should have been exercised differently.

4.2 An applicant must give arguments and any supporting evidence which justifies the grounds given for applying for a review.

4.3 Applications for a review of a decision should not be made on grounds that do not apply to the applicant directly.

5 Application for a Review of an Immigration Decision

5.1 The Service will inform the applicant in writing of any decision and the reasons for it. The applicant will also be advised whether the decision can be reviewed under this policy and the Service will explain what to do next.

5.2 Applications made in Jersey

Unless the applicant has been refused entry at a port of entry (see paragraph 3.5 above) and provided an applicant who has requested a review has a valid leave to enter or remain, the applicant may ask for a review of the decision whilst he or she is in Jersey. Should the applicant's leave expire before a review is concluded, the applicant will not be required to return abroad during the review process. In such cases a temporary permission to remain in the Island may be granted to cover the review process.

If, after the review of an applicant's circumstances, it is decided that the applicant does not qualify for further permission to stay in Jersey, the applicant may be required to leave the Island by returning abroad, either voluntarily or by enforced removal to the country or territory of which the applicant is a national.

In cases where persons no longer have valid leave to enter or remain, or are otherwise unlawfully in Jersey, enforcement action to remove a person applying to have a review of an Immigration decision will not be suspended, and that review will be conducted whilst the applicant is outside the United Kingdom and Islands.

5.3 Applications made outside Jersey

Jersey Customs and Immigration will inform all applicants in writing of any decision, and the

reasons for it, via the British Diplomatic Post abroad where the application was made. The applicant will be advised whether the decision can be reviewed and will be told what to do next.

6 Review Procedures

- 6.1 Any application for a review of an immigration decision must be made in writing to the Head of Service, Jersey Customs and Immigration Service, Maritime House, St Helier, Jersey, JE1 1JD no later than 28 days from the date of the notice of refusal. The Head of Service, or in his absence a Senior Manager of the Service, will acknowledge receipt of a request for a review in writing. The Head of Service, or in his absence a Senior Manager of the Service, will arrange for a review to be undertaken by a member of the Customs and Immigration Service's Senior Management team who was not involved with the original decision. The outcome of such a review will be provided to the applicant in writing, with the full reasons for the decision.
- 6.2 The Senior Manager will consider the grounds of the review and supporting documents and will assess whether the applicant has satisfactorily addressed the reasons for refusal. If the applicant has successfully addressed all the points of refusal the decision will be overturned and immigration permission granted. If the applicant has failed to address the reasons for refusal, a written statement detailing why the decision is being upheld will be provided.
- 6.3 If another person is acting on behalf of an applicant, the Customs and Immigration Service will need to be satisfied that the person requesting the review has written authority from the applicant to act on the applicant's behalf and for all relevant information to be disclosed in accordance with the provisions of the Data Protection (Jersey) Law 2018.
- 6.4 If the applicant is not satisfied with the outcome of a Senior Manager review, the applicant may request that the application be referred to the Minister for Home Affairs for consideration. Notification of the Minister's decision will be made in writing to the applicant or the applicant's representative.

7 Evidence

- 7.1 Any material change in circumstance or evidence not reasonably foreseeable after the date of refusal should not be taken into account. In practice this means that a review will only look at circumstances leading up to and including the date of refusal, or evidence that existed at that time.
- 7.2 **New evidence** which postdates the decision cannot be considered. However this evidence will be acknowledged and can be used to support a fresh application.

Examples of new evidence (These are common examples and are not an exhaustive list)

- Unexpected increase in funds postdating the decision.
- Sponsor obtains new employment that was not engaged in/expected at the date of decision.
- An offer of accommodation which was not available at the date of decision.
- A new sponsor appears in the grounds of appeal. This is not reasonably foreseeable.

- 7.3 **Additional evidence** that relates to the initial application can be considered. The most common instances of additional evidence will be documents that the applicant failed or omitted to produce with the application.

Examples of additional evidence (These are common examples and are not an exhaustive list)

- A bank statement issued after the date of the decision that shows a satisfactory balance on or leading up to the date of decision.
- Satisfactory evidence of accommodation submitted by the sponsor relevant to the decision.
- Evidence of employment at the date of decision which was omitted from the original application.
- A birth certificate evidencing the relationship of parties which was not produced at the time of decision.

- 7.4 Where an applicant provides evidence which appears to discharge the burden of proof and

satisfactorily addresses the reasons for refusal, the decision may be overturned and the appropriate immigration permission granted.

8 Judicial Review

- 8.1 An applicant is entitled to apply for leave to bring judicial review proceedings.
- 8.2 Whether an application would satisfy the judicial review criteria is one on which the applicant should obtain their own independent legal advice. An application for judicial review must be made promptly, and generally not later than 3 months from the date when grounds for the application first arose.
- 8.3 The decision whether or not to grant leave rests with the Bailiff.

9 Further Advice

For further advice regarding reviews of Immigration decisions, contact may be made with the Immigration Casework Section, Jersey Customs and Immigration Service, Maritime House, St Helier, Jersey, JE1 1JD.

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