



Home Office

Suitability: false representations, deception, false documents, non-disclosure of relevant facts

Version 4.0

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About this guidance

This guidance is for decision makers (including entry clearance officers and Border Force) considering a refusal under paragraph 9.7.1. of Part 9 of the Immigration Rules on grounds of false representations, false documents, false information or failure to disclose a relevant fact where refusal is discretionary.

This guidance also covers where there is deception by the applicant and the mandatory ground of refusal in paragraph 9.7.2. applies. This requires you to be satisfied there has been a deliberate intention to deceive by the applicant.

If the applicant is found to have used deception in a previous application, this is a previous breach of immigration laws such that paragraphs 9.8.1 and 9.8.2. of Part 9 of the Immigration Rules apply.

This guidance is also for decision makers considering cancellation of entry clearance or permission to enter or permission to stay held by a person on grounds of false representations, false documents, false information or failure to disclose a relevant fact. Cancellation is under paragraph 9.7.3 of Part 9, or in the case of permission extended by section 3C of the Immigration Act 1971 and only where the applicant has used deception in the application for permission to stay under paragraph 9.7.4. of Part 9.

The guidance applies to applications made on or after 1 December 2020 and decisions to cancel made on or after 1 December 2020.

This guidance does not apply to applications made under:

- Appendix EU
- Appendix EU (Family Permit)
- Part 11 (Asylum), except paragraphs 352ZH to 352ZS, and 352I to 352X, and 352A to 352FJ
- Appendix S2 Healthcare Visitor
- Appendix Service Providers from Switzerland
- applications on grounds of private life under paragraphs 276ADE to 276DH

Appendix Electronic Travel Authorisation cases

For suitability considerations under Appendix Electronic Travel Authorisation, refer to the Electronic Travel Authorisation guidance. Part 9 does not apply to Appendix Electronic Travel Authorisation and so this guidance does not apply to Appendix Electronic Travel Authorisation applications other than the sections specified in the Electronic Travel Authorisation guidance.

Family Cases (Appendix FM) and Armed Forces cases (Appendix AF) and Appendix Adult Dependent Relative

- Appendix FM except that paragraph 9.7.3. applies to Appendix FM applications for permission to stay
- Appendix Adult Dependent Relative except that paragraph 9.7.3 applies to Appendix Adult Dependent applications for permission to stay
- Appendix AF except that paragraph 9.7.3. applies to Appendix AF cases

ECAA Cases

- paragraph 9.7.3. applies to applications for entry clearance or permission to stay granted by virtue of the ECAA Association Agreement where the adverse conduct occurred after 11pm on 31 December 2020
- paragraphs 9.7.1., 9.7.2. and 9.7.3. only apply to applications for permission to stay under Appendix ECAA Extension of Stay where the adverse conduct occurred after 11pm on 31 December 2020

Domestic workers who are the victim of slavery or human trafficking Cases (Paragraph 159I)

- paragraphs 9.7.1, 9.7.2 and 9.7.3 apply to applications for permission to stay as a domestic worker who is the victim of slavery or human trafficking

Contacts

If you have any questions about the guidance and your line manager or senior caseworker cannot help you or you think that the guidance has factual errors then email the Administrative Policy team.

If you notice any formatting errors in this guidance (broken links, spelling mistakes and so on) or have any comments about the layout or navigability of the guidance then you can email the Guidance Rules and Forms team.

Publication

Below is information on when this version of the guidance was published:

- version **4.0**
- published for Home Office staff on **14 November 2023**

Changes from the last version of this guidance

[Appendix Electronic Travel Authorisation](#) information has been added to the 'About this guidance' section.

Related content

[Contents](#)

Grounds for refusal

Meaning of terms used in this guidance

This section explains what is meant by the terms used in this guidance such as false representations.

There is no definition of false representations and false information in the Immigration Rules. However, the Supreme Court in 2009 *Mahad (Ethiopia) v Entry Clearance Officer* [\[2009\] UKSC 16](#) per Lord Brown at [10] said :

"The Rules are not to be construed with all the strictness applicable to the construction of a statute or a statutory instrument but, instead, sensibly according to the natural and ordinary meaning of the words used, recognising that they are statements of the Secretary of State's administrative policy."

Unless a particular meaning has been applied by the courts as described below, you should use the natural and ordinary meaning of the words when making your decision.

The meaning of “false”

“False” means not true, incorrect or misleading.

The requirement for there to be deception before an application can be refused on grounds of false representations was discussed by the Court of Appeal in [AA \(Nigeria\) \[2010\] EWCA Civ 773](#). That case concerned the interpretation of an equivalent provision, (previously in paragraph 322(1A) of the immigration rules). The Court concluded that before an application can be refused on grounds of false representations:

“Dishonesty or deception is needed, albeit not necessarily that of the applicant...”.

The Court of Appeal in the case of [Balajigari v SSHD \[2019\] EWCA Civ 673](#) confirmed this:

“The recognition of dishonesty as a touchstone in the context of the general grounds of refusal, albeit a different ground relating to “false representations”, is consonant with the approach of Rix LJ in *Adedoyin v Secretary of State for the Home Department* [\[2010\] EWCA Civ 773](#), [\[2011\] 1 WLR 564](#)”

In July 2020 the Court of Appeal in Northern Ireland in the case of [Layupan](#) again confirmed AA Nigeria was correct:

“At the conclusion of his analysis, in [76], Rix LJ states equally unambiguously that dishonesty or deception on the part of some person is an essential pre-requisite to mandatory refusal.” view of the law.”

Representations

“Representations” means statements or assertions which can be made orally or in writing, by the applicant or a third party such as an immigration adviser, partner, parent or friend, and can include the following (this is not an exhaustive list):

- oral answers in an interview
- answers in an application form
- further submissions or representations

Information

“Information” can be provided orally or in writing, by the applicant or a third party such as an Immigration adviser, partner, parent or friend, and can for example include:

- information provided orally in an interview
- answers on an application form, for example an incorrect nationality or date of birth
- incorrect information about earning provided to HMRC in order to obtain an incorrect P60 to use in an immigration application

False documents

“False Document” is defined in paragraph 6 of the Immigration Rules as including any of the following:

- a document which has been altered or tampered with
- a counterfeit document
- a document which is being used by an imposter
- a document which has been fraudulently obtained or issued
- a document which contains a falsified or counterfeit entry clearance, visa or endorsement

If you suspect a false document has been submitted you should consider whether to take steps to verify it. For example, you may be able to check with the issuer of the document at source or the specialist teams within BICS to verify the document.

Official - sensitive: start of section

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

Official – sensitive: end of section

For further guidance on document verification see the document verification guidance.

Relevance and knowledge of false representations, false information and false documents

Even if the applicant did not know that false representations were made, or false information or false documents were submitted, and whether or not they were relevant to the application, the application may still be refused on suitability grounds and entry clearance or permission may be cancelled: see guidance on [considering the decision](#).

Non-disclosure of relevant facts

Whether there has been non-disclosure, and whether facts are relevant, will depend on the context, but silence or incomplete information can amount to non-disclosure.

A person is not required to volunteer information unless it is clear from the context that it is required.

Examples include:

- failure to disclose the existence of a family member
- failure to disclose a criminal conviction
- failure to disclose previous travel to the UK
- failure to disclose presence of family members in the UK

Cases not involving deception

There is a distinction between information that is false but where you are not satisfied there was an intention to deceive by the applicant and cases where you are satisfied there was deception by the applicant.

If you can prove that the applicant has used deception, refusal of the application is mandatory (subject to the [exceptions](#) below) under [Mandatory Refusal- 9.7.2](#) of Part 9.

Permission extended under paragraph 3C of the Immigration Act 1971 may be cancelled under paragraph 9.7.4. if you can prove the applicant has used deception, but cancellation is discretionary.

In all other cases where you cannot prove deception by the applicant refusal/cancellation is discretionary and if the applicant (or a third party) makes false

representations or submits false information or false documents or fails to disclose relevant facts you may refuse the application, or existing permission may be cancelled under paragraph 9.7.1. or 9.7.3. of Part 9.

An allegation of deception must not be made unless there is evidence to support the allegation, but false information, etc can still result in a refusal under the rules where there is no evidence of deception. If the information, etc provided is incorrect but there is insufficient evidence of deception the application must be considered for refusal on eligibility grounds, as incorrect information will not show that the applicant meets the requirements of the rules. If you are considering cancellation of leave you must also consider whether the person still meets the requirements of the rules. Further guidance is given in [Mistakes](#).

Immigration Rules on false representations , false documents or false information, relevant facts not disclosed and deception

The rules in the table below provide for refusal and cancellation decisions covered by Part 9 of the Immigration Rules. The table also includes the existing powers for Appendix FM and Appendix AF which are still in force.

Part 9 of the Immigration Rules does not apply to applications made under:

- Appendix EU
- Appendix EU (Family Permit)
- Part 11 (Asylum), except paragraphs 352ZH to 352ZS, and 352I to 352X
- Appendix S2 Healthcare Visitor
- Appendix Service Providers from Switzerland
- applications on grounds of private life under paragraphs 276ADE to 276DH

For these applications you will need to consult their separate guidance:

- S2 Healthcare visitor
- EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members
- Asylum
- Family life (as a partner or parent), private life and exceptional circumstances

Where an application is refused on grounds of false representations, etc it should also be refused on eligibility grounds, if appropriate

False representations, false information

Decision	False representations etc. by applicant or third party in the current application	False representations etc. by applicant or third party in a previous application	Deception by applicant in the current application	Deception by applicant in a previous application
Refusal of entry clearance or permission to enter or stay	Paragraph 9.7.1. of Part 9	-	Paragraph 9.7.2. of Part 9	Paragraph 9.8.1 and 9.8.2. of Part 9 (in relation to refusal of entry clearance or permission to enter only)
Cancellation of entry clearance or permission to enter or stay	Paragraph 9.7.3. of Part 9.	Paragraph 9.7.3. of Part 9	-	-
Cancellation of 3C leave	-	-	Paragraph 9.7.4. of Part 9	-
Cancellation of permission to stay under Appendix FM and Appendix Adult Dependent Relative	Paragraph 9.7.3. of Part 9	Paragraph 9.7.3. of Part 9	-	S-LTR.4.2 or 4.3
Refusal of entry clearance or permission to enter or stay under Appendix FM and Appendix Adult Dependent Relative	S-EC.2.2 S-LTR.2.2	-	-	-

Decision	False representations etc. by applicant or third party in the current application	False representations etc. by applicant or third party in a previous application	Deception by applicant in the current application	Deception by applicant in a previous application
Refusal of entry clearance or permission to enter or stay under Appendix AF	AF 9(a)	-	-	-
Cancellation of entry clearance or permission to enter or stay under Appendix AF	Paragraph 9.7.3. of Part 9	Paragraph 9.7.3. of Part 9	-	-
Cancellation of entry clearance or permission to enter or stay under ECAA Agreement where the adverse conduct occurred after 11pm on 31 December 2020	Paragraph 9.7.3. of Part 9	Paragraph 9.7.3. of Part 9	-	-
Refusal of entry clearance and permission to enter or stay under Appendix ECAA Extension of Stay	Paragraph 9.7.1. of Part 9	-	Paragraph 9.7.2. of Part 9	Paragraph 9.8.1 to 9.8.2. of Part 9

Decision	False representations etc. by applicant or third party in the current application	False representations etc. by applicant or third party in a previous application	Deception by applicant in the current application	Deception by applicant in a previous application
Cancellation of entry clearance or permission to enter or stay under ECAA Agreement where the adverse conduct occurred after 11pm on 31 December 2020	Paragraph 9.7.3. of Part 9	Paragraph 9.7.3. of Part 9	-	-
Refusal of entry clearance and permission to enter or stay under paragraph 159 I	Paragraph 9.7.1. of Part 9	-	Paragraph 9.7.2. of Part 9	-
Cancellation of entry clearance or permission to enter or stay under paragraph 159 I (Domestic workers who are the victim of slavery or human trafficking Cases)	Paragraph 9.7.3. of Part 9	Paragraph 9.7.3. of Part 9	-	-

When to rely on non-conductive to the public good grounds

Part 9 of the Immigration rules does not apply to applications made under:

- Appendix EU
- Appendix EU (Family Permit)
- Part 11 (Asylum), except paragraphs 352ZH to 352ZS, and 352I to 352X
- Appendix S2 Healthcare Visitor
- Appendix Service Providers from Switzerland
- applications on grounds of private life under paragraphs 276ADE to 276DH

For these applications you will need to consult their separate guidance:

- S2 Healthcare visitor
- EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members
- Asylum
- Family life (as a partner or parent), private life and exceptional circumstances

In cases where there is clear evidence of dishonesty or deception but none of the paragraphs in the table above applies (if, for example, the applicant sought to deceive a government department other than the Home Office) and a refusal on eligibility grounds alone is not adequate to reflect the seriousness of the behaviour, it may be appropriate to refuse the application, or cancel entry clearance or permission, on non-conductive grounds. The relevant rules are in the table below

Type of application	Non-conductive grounds
Entry clearance or permission to enter or permission to stay	Paragraph 9.3.1. and 9.3.2. of Part 9
Appendix Armed forces	AF 8(g) and Paragraph 9.3.2. of Part 9
Appendix FM Family members	S-EC.1.5 S-LTR.1.6 S-ILR.1.8
Appendix Adult Dependent Relative	S-EC.1.5 S-LTR.1.6 S-ILR.1.8
applications for entry clearance or permission to stay granted by virtue of the ECAA Association Agreement	Paragraph 9.3.2. of Part 9
applications for permission to stay under Appendix ECAA Extension of Stay,	Paragraph 9.3.1. of Part 9
Domestic workers who are the victim of slavery or human trafficking Cases (Paragraph 159I)	Paragraph 9.3.1. and 9.3.2. of Part 9
Appendix EU	EU 16 (c) (ii)

In [Balajigari v SSHD \[2019\] EWCA Civ 673](#), the Court of Appeal held that dishonest conduct was capable of coming within the terms of the non-conductive provision, subject to the guiding principle that the relevant conduct must be serious. The Court held that not all dishonesty is sufficiently serious to meet the threshold but did not accept that dishonest conduct would have to be criminal to meet the threshold. By way of example, the Court said it was very hard to see how deliberate and dishonest submission of false earnings figures to a government department would not be sufficiently serious to meet the non-conductive threshold.

In Balajigari the appellants had declared a different level of income to Her Majesty's Revenue and Customs (HMRC) for tax purposes than they provided to the Home Office for the purposes of meeting the requirements of the immigration rules. As it was unclear whether the alleged false representations were to the Home Office or HMRC the false representation rules did not apply. Subject to the requirement that the dishonest conduct must be serious to rely on non-conductive grounds, other examples include, but are not limited to:

- fraudulently claiming benefits or otherwise defrauding the benefits system
- providing false details to obtain an official document, such as a driving licence or passport

When considering using the non-conductive grounds you should therefore consider both whether there has been something like a false representation (such as, you are satisfied that dishonesty or deception is involved) and whether the conduct is sufficiently serious. You must assess whether there was incorrect information and whether it was a false representation and what, if anything, was intended or gained as a result. For example, you should not refuse on non-conductive grounds if a person was unaware that the false representation had been made (for example by a third party) or has merely claimed something to which they were not entitled without any dishonest intention.

Burden and standard of proof

The burden of proof is on the applicant to show that they meet the requirements of the Rules. However, if you allege false representations, etc the burden of proof is on the Home Office to show both:

- that the representations are not true
- there is dishonesty or deception

Relevant evidence may include, for example, discrepancies in the information provided by the applicant at various times, discrepancies between that information and information available from other sources, such as other government departments, and intelligence reports on the veracity of documents submitted.

Allegations of dishonesty or deception are serious, with significant consequences for applicants and their families. The legal standard of proof is 'balance of probabilities', which means it is more likely than not that the applicant or a third party has

deliberately and dishonestly made false representations, submitted false documents or information or failed to disclose material facts.

In Balajigari the Court of Appeal commented

“the Secretary of State must be satisfied that dishonesty has occurred, the standard of proof being the balance of probabilities but bearing in mind the serious nature of the allegation and the profound consequences which follow from such a finding of dishonesty.”

It is not appropriate to refuse based on false representations simply because you are not satisfied that the applicant has given correct information. Even if the omission or incorrect information is capable of leading a caseworker to make the wrong decision, if you allege false representations you must be able to show, on the balance of probabilities, that there was a deliberate intention to deceive by the applicant or a third party.

In some circumstances the applicant must be informed of the allegation of false representations, etc and given the chance to respond before a decision is made on the application, see the section on [procedural fairness](#) for more information.

Related content

[Contents](#)

Considering false representations

This section explains how to consider things such as false representations.

If false information is provided as part of an application, either orally or in writing, including deliberately withholding relevant information or submitting false documents, you must consider refusing entry clearance or permission to enter or permission to stay on suitability grounds on grounds of false representations.

It is important to be clear in the decision whether the false representation was made in relation to the current or a previous application, by whom it was made, and whether there was deception, as that will determine what action should be taken.

Mistakes

You must consider whether an innocent mistake has, or could have, been made. You must not refuse on grounds of false representations if there may have been an innocent mistake, or because there are minor but immaterial inaccuracies, such as typographical errors in the application: for example, if an applicant has given an incorrect postcode or misspelt a name on their application form. It may still be right to refuse the application if the mistake means you are not satisfied that the requirements of the rules are met. For example, if the applicant has said they have an income of £40,000, but has provided evidence only for £4,000, you may take the view that the higher figure was an innocent mistake but may still refuse the application on eligibility grounds if on the evidence provided the required income under the rules is not met.

In entry clearance cases, you should refer any inaccuracy to the entry clearance manager (ECM) if you intend to issue. You must update PROVISO to indicate why you considered it an innocent mistake rather than dishonesty or deception.

In considering whether an innocent mistake has been made, you should ask:

- how easy would it be to make an innocent mistake?
- how likely is it that the applicant was unaware the information has been provided?
- how likely is it the applicant, or the person providing the information, etc, is aware that the information is incorrect)?
- does the false information benefit the applicant?
- is it contradicted by other answers on the application form, or by any information in any documents provided with the current or a previous application?
- does any endorsement or stamp in the passport or ID document contradict any answer given?
- has a new passport been presented, and if so why?
- has this 'innocent mistake' also been made on a previous application?

Unless you are satisfied that the inaccuracy is the result of deception (by the applicant or a third party) you should not refuse the application on the grounds of false representations.

Deception by a third party

For example, if an applicant was not aware that the information submitted was false, because there was deception by their partner or immigration adviser, and the false information was not relevant to the application, you may decide not to refuse on suitability grounds. Relevant factors to consider would include whether the applicant ought to have known the information was false, for example did they declare that the information was true to the best of their knowledge and belief? Was it reasonable of them to have done so without checking the accuracy of the information? What would be the effect of refusal on the applicant and would that be outcome be reasonable in all the circumstances of the case?

If necessary, you should consult a SCW for further advice before making a decision.

Mandatory refusal: 9.7.2.

Where paragraph 9.7.2. of Part 9 applies, you must refuse an application for entry clearance, permission to enter or permission to stay made on or after 1 December 2020 where you can prove that it is more likely than not the applicant used deception in the application.

Where you make a finding of deception you must make it clear that is your view. Stating that you have “doubts” or “concerns” is not sufficient. You must say that you believe there has been dishonesty or deception and explain why you have reached that view.

Where you have found that there has been deception you must refuse the application on suitability grounds unless an exception applies. It may be necessary to apply a minded to refuse process to gather the relevant information: see guidance on [procedural fairness](#).

If it is claimed that refusal is not appropriate because it would be a breach of human rights and the claim is sufficiently particularised you should treat that as a human rights claim. Guidance on what amounts to a human rights claim is available in Rights of appeal. Guidance on how to consider a human rights claim and how to grant permission in the event that the claim succeeds is available for family and private life cases and for medical and other cases.

Discretionary refusal: 9.7.1.

Where paragraph 9.7.1. of Part 9 applies, you may refuse an application for entry clearance, permission to enter or permission to stay made on or after 1 December 2020 on the grounds that the applicant has made false representations, submitted false information or false documents, or failed to disclose relevant facts: see [Considering false representations](#).

Discretionary cancellation: 9.7.3.

Under paragraph 9.7.3. of Part 9 you may cancel existing entry clearance or permission to enter or stay held by the person on the grounds that the applicant has made false representations, submitted false information or false documents, or failed to disclose relevant facts.

This decision will normally be made at the same time as refusing an application for entry clearance or permission to enter or stay under paragraph 9.7.1 or 9.7.2. because false representations have been made, or false information or false documents submitted, or there has been a failure to disclose relevant information in relation to the application, or deception has been used: see guidance on [Considering false representations](#).

Cancellation in country will normally take place when there is no other decision to be made and the deception or false representations has been identified at a later stage. Such applications are normally referred to the Status Review Unit.

Official – sensitive: start of section

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

Official – sensitive: end of section

In such cases you will already have explained why you believe there to have been dishonesty or deception in relation to the application. You should then consider whether that indicates that the extant entry clearance or permission should also be cancelled. see guidance on [procedural fairness](#)

You should consider the factors set out in the guidance on cancellation.

Discretionary cancellation: 9.7.4.

Under paragraph 9.7.4. of Part 9 you may cancel existing permission extended under section 3C of the Immigration Act 1971 where you can prove that it is more likely than not the applicant used deception in the application for permission to stay.

You should consider the factors set out in the guidance on cancellation.

Procedural fairness

The Court of Appeal in the case of [Balajigari v Home Secretary \[2019\] EWCA Civ 673](#) found that in certain cases where the Secretary of State is considering refusing an application, or cancelling permission, on the basis of false representations, etc. the applicant must be given an opportunity to address that allegation of deception before a decision is made. A finding that the applicant has themselves used

deception also means subsequent applications can be refused on the basis of the deception under paragraph 9.8.1 and 9.8.2. of Part 9.

If you are considering refusing or cancelling on the basis of false representations or deception, you must provide a 'Minded to Refuse/Cancel notification', which means simply that you must tell the applicant you are thinking of refusing the application and/or cancelling entry clearance or permission, based on false representations. You must set out exactly what the allegation is and make it clear you are alleging dishonesty/deception, including whether you allege the deception was that of the applicant or another. You must also give the applicant the chance to respond to the allegation before you make your decision.

You may give the Minded to Refuse/Cancel notification and ask for any response either in a person (usually an interview at the border or by appointment) or by written notification if the person is in the UK or Overseas. You must then consider, in the light of the response (if any is given), whether there is sufficient evidence that the applicant (or, if relevant, a third party) has been dishonest.

You must give the applicant a reasonable period in which to respond to the Minded to Refuse/Cancel notification or, if the applicant states they want to provide documentary evidence to support an explanation given in an interview. What is reasonable will depend on the circumstances, but at the border an explanation ought to be forthcoming, in other cases 10 working days will normally be sufficient. You must then consider, in the light of the response (if any is given), whether there is sufficient evidence that the applicant (or, if relevant, a third party) has been dishonest.

Minded to Refuse interviews

You can carry out a "Minded to Refuse/cancel" interview straight away if the operational circumstances allow. You must put your evidence to the applicant and give them an opportunity to respond.

Border Force guidance on interviews is at: immigration interviews.

When you must tell the applicant that you are alleging deception and give them an opportunity to respond

You must do so where both of the following apply:

- the applicant may not necessarily know about the information you have considered, or its significance, for example information obtained directly from another government department
- the implications for an applicant of a finding of deception are significant

Examples

The applicant may not necessarily know about the information you have considered, or its significance, for example information obtained directly from another government department

Whether the applicant could reasonably be expected to have known about the issue in advance of your allegation will depend on the circumstances. For example, the applicant may have said they have never received public funds, but DWP may provide information demonstrating receipt of public funds.

Before you make a finding of deception you should give the applicant the chance to explain the discrepancy. Or, you may find that a passport has been damaged in a way that suggests deliberate tampering. The applicant may be aware of the damage and have an innocent explanation, but it may not occur to them that an explanation is required unless you explain your concerns.

The implications for an applicant of a finding of dishonesty are significant.

The seriousness of the consequences for the applicant is a fact-sensitive issue but, for example, if the applicant is lawfully in the UK and is seeking settlement or further leave to remain and will have to leave the UK if refused, that is a serious consequence.

If an applicant would qualify for settlement but for an allegation of deception, the fact that a decision to refuse or cancel will result in the applicant having no leave is a serious consequence.

A decision that exposes the applicant to the compliant environment will have serious implications, because it will mean that they can no longer open a bank account, rent accommodation and so on. The level of seriousness will depend on how deeply the applicant (and any family members) have established roots in the UK.

By contrast, it will rarely be the case that an application for entry clearance or permission to enter reaches the required level of seriousness, because in most such cases a refusal will not change the applicant's circumstances.

How to consider the responses to the Minded to Refuse/Cancel notification

You must

- consider any responses received to the allegation of deception and decide whether you are satisfied on the balance of probabilities that the allegation is sustainable
- even if the applicant fails to provide an explanation, you must still consider whether on the available evidence you are satisfied, on the balance of probabilities
- consider any mitigating factors raised as to why, even if there was deception, the person's presence in the UK is not undesirable when their case is considered as a whole

- consider if there are mitigating factors or positive factors (such as outstanding contributions to the community in the UK) that outweigh the deception
- if you find it would be undesirable to allow the applicant to come to or remain in the UK, you must also consider whether there are any exceptional reasons why the application should be granted, or the entry clearance or permission not cancelled

Mandatory refusals or cancellation

Where you are considering refusal or cancellation under a mandatory provision for example under 9.7.2 or 9.7.4. you should consider whether the exceptions apply.

Discretionary refusals/cancellation

Where you are considering refusal/cancellation under a discretionary provision where the application “may” be refused, you should consider whether, in the particular circumstances of the case, the presumption of refusal is outweighed by factors in the applicant’s favour and it may be necessary to apply a minded to refuse process to gather the relevant information.

Non-conducive to the public good refusals/cancellation

Where you are considering refusal/cancellation under a non-conducive to the public good provision, you must consider all the circumstances of the case, weighing up the false representations and other factors including any factors which may mean that the applicant’s presence in the UK is not undesirable. That requires you to have given the applicant the opportunity to provide all relevant information.

Exceptions

Where mitigating factors, including human rights, are raised in response to the Minded to Refuse/ cancel notification

If it is claimed that refusal/cancellation is not appropriate because it would be a breach of human rights and the claim is sufficiently particularised you should treat that as a human rights claim. Guidance on what amounts to a human rights claim is available in Rights of appeal. Guidance on how to consider a human rights claim and how to grant leave in the event that the claim succeeds is available for family and private life cases and for medical and other cases.

If a human rights claim has been made and, having considered all the circumstances of the case, you decide refusal is appropriate there will be a right of appeal against the refusal of the human rights claim. The allegation of false representations will be able to be addressed at that appeal, so you must make it clear in the decision notice whether you are refusing on grounds of false representations or on other grounds.

Where you are satisfied that an applicant for settlement (ILR) cannot be removed because of human rights grounds, but would otherwise fall for refusal on grounds of

false representation, it may be appropriate to refuse indefinite leave to remain (ILR) but grant limited leave to remain on human rights grounds. Guidance on this can be found in family and private life cases and for medical and other cases.

If no human rights claim is made in response to the refusal notification and you decide refusal is appropriate there will be a right of administrative review against the refusal, unless the application you are refusing is itself an application on human rights grounds (in which case see the guidance on Rights of appeal).

Outside the UK, applications based on a human rights claim must form part of a valid application for entry clearance. The list in the Rights of Appeal guidance under section overseas: application under the Immigration Rules gives the forms available for human rights applications under the rules. Where applicants cannot find an appropriate form or believe that they cannot meet the requirements of the Immigration Rules, they must complete the form for the route which most closely matches their circumstances and pay the relevant fee and charges. Any compelling compassionate factors they wish to be considered, including any documentary evidence, must be provided as part of the application for entry clearance on that route. Any dependants of the main applicant seeking entry clearance at the same time, must follow the same process and pay the relevant fees and charges.

For example, Part 9 of a visit visa application form allows the applicant to set out any other information that should be considered as part of the application. This can include a human rights claim that leave as a visitor should be granted outside the rules.

Where an application which engages human rights has been made and is refused there will be a right of appeal. With visitors as the rules do not of itself of themselves engage human rights there will only be a right of appeal if the human rights claim is particularised. For further information see [considering human rights in visitor applications](#).

Where the application does not engage human rights there may be a right of administrative review, for further details see the guidance on Administrative review.

Cancellation decisions: rights of appeal and administrative review

A person does not have a right of appeal or administrative review in respect of a cancellation decision made on or after 6 April 2015. In such cases either:

- their leave expires with immediate effect
- they are left with a period of permission following cancellation

You must make sure that the cancellation decision does not state that the person has a right of appeal or administrative review. If the cancellation decision is made at the same time as a refusal of a protection or human rights claim there may be a right of appeal against that decision.

Example mandatory refusal: deception

I am refusing your application as I am not satisfied you meet the suitability requirements of the Rules.

In support of your application you submitted passport number xxx from country xxx which contained a false entry clearance vignette. I have confirmed with the Entry Clearance post that you were not issued with entry clearance on this date. I am therefore satisfied that you have submitted a false document and you did so with an intention to deceive. I have therefore found that you used deception in your application and I am refusing your application under paragraph 9.7.2 of Part 9 of the Immigration Rules.

Example discretionary refusal/cancellation

I am refusing your application as I am not satisfied you meet the suitability requirements of the Rules.

In support of your application you provided a bank statement from x bank [dated] as proof of your income. We contacted x bank on [date] and they stated that you do not have an account with them and that the bank statement you provided is a forgery. I asked you at interview on x date whether the bank statement was genuine and you said it was. I told you that I believed the bank statement was a forgery and that the bank had confirmed this. I said I believed you had used deception. You then admitted that you knew the bank statement was a forgery and that you had bought it from an acquaintance.

I asked you whether there was any reason why, in view of your deception, I should not refuse your application. You said [explain] however [your response].

I have considered all the circumstances of your case and I have decided it is appropriate to refuse your application because you provided a false bank statement in support of your application, I am refusing your application under paragraph 9.7.1. of Part 9 of the Immigration Rules.

I have also considered whether it would be appropriate to cancel your current permission as a [skilled worker]. In view of the false representations I am not satisfied that your income is £xxxxx meets the requirements for a skilled worker. I have therefore decided it is appropriate to cancel your permission to stay as a skilled worker with effect from [date].

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