

CCPC



HOME OFFICE
QUEEN ANNE'S GATE
LONDON SW1H 9AT

7 February 1986

TFsee

Dear Robert,

IMMIGRATION CASES

Following the Home Secretary's letters of 15 January to your Secretary of State and to the Lord Privy Seal, the Home Secretary has approved draft guidance for the future handling of representations by Members of Parliament in immigration cases. The Lord Privy Seal and the Chief Whip have agreed that the guidance should be published on Tuesday, 11 February in response to an Arranged Question, and that after a period for comments (during which Mr Waddington will hold discussions with some groups of MPs) there should be a debate.

..... I enclose a copy of the Arranged Question and Answer, and a copy of the draft guidance.

Copies of this letter, and enclosures, go to the Private Secretaries to the Prime Minister, the Lord President, the Chancellor of the Exchequer, the Lord Privy Seal, the Chancellor of the Duchy of Lancaster, the Secretaries of State for Employment, Transport and Trade & Industry, the Chief Whip, and Sir Robert Armstrong.

Yours,

S W BOYS SMITH

Robert Culshaw, Esq.

PARLIAMENTARY QUESTION FOR ANSWER ON TUESDAY 11 FEBRUARY 1985

Mr Ivan Lawrence (Burton): To ask the Secretary of State for the Home Department pursuant to his reply of 18 December 1985, Official Report column 176, how he intends to proceed with the discussions about representations made by right honourable and honourable Members in immigration cases.

DRAFT REPLY

Draft guidelines have been prepared setting out proposals for the practice to be followed in the general run of immigration cases, and a copy of the draft guidelines has been placed in the Library of the House.

The objective of these proposals is to assist rt hon and hon Members to carry out their responsibilities on behalf of their constituents in a way which is compatible with an effective and efficient immigration control in accordance with the Immigration Act 1971 and the Immigration Rules which have been approved by Parliament. The guidelines provide a facility for rt hon and hon Members to obtain the facts relating to a decision to refuse entry quickly so that they can decide whether there is a case for making substantive representations. At the same time the guidelines seek to set sensible time scales within which representations should be made.

My hon and Learned Friend has written to a number of rt hon and hon Members, whom we know to be closely involved or interested in these matters, inviting their views on the guidelines proposed but the views of all hon Members will be welcomed. The House will have an opportunity to debate the proposals before new guidelines become effective.

GUIDANCE ON THE HANDLING OF
REPRESENTATIONS BY MEMBERS OF PARLIAMENT
IN IMMIGRATION CASES

The Home Office
February 1986

INTRODUCTION

1. This document sets out guidelines for the assistance of MPs in carrying out their responsibilities on behalf of constituents in the general run of immigration cases. In particular it describes the way the Home Office will proceed in carrying out its responsibility for implementing an effective and efficient immigration control in accordance with the Immigration Act 1971 and the Immigration Rules which have been endorsed by Parliament.

THE ROLE AND PRACTICE OF THE HOME OFFICE

Representations in cases where a person has been refused entry

Appeal Rights

2. The statutory power to admit a person to this country is vested in the immigration officer, not the Minister. The law provides that unless a person has an entry clearance or work permit on arrival he can only appeal from abroad against the immigration officer's decision to refuse leave to enter. When, therefore, a person refused entry has no right of appeal in this country, the Minister will not normally intervene to overturn the decision of an immigration officer unless there is new and compelling evidence which was not available to the immigration officer.

Initial Inquiries

3. A Member of Parliament can obtain the reasons for refusal of entry in a particular case by contacting the Chief Immigration Officer at the port concerned. Any Member wanting advice as to the procedure, or experiencing difficulty, can ring the Minister's Private Office, but the Minister's Office will no longer relay requests for 'stops' to the port now that Members can approach the port direct and at the same time get the facts.

Dealing direct with the port

4. On being furnished by the Immigration Service with a brief oral summary of the reason(s) for the refusal decision the Member can decide whether, in the light of the statutory provisions, there are grounds for making representations

and the Chief Immigration Officer will then ask him whether he wishes to pursue the case formally with the Minister. If the Member decides that he no longer wishes to pursue the case, arrangements will be made for the passenger to be removed as soon as practicable.

Representations to the Minister

5. If the Member says he wishes to submit written representations (or have further time to consider whether to do so) action to remove the passenger will be deferred for a period of 10 working days to enable written representations to be submitted.

Temporary Admission

6. If removal arrangements are deferred the Immigration Service will decide whether the passenger should be kept in custody or granted temporary admission. Temporary admission is likely to be granted, except:

- i. where the Service judges that there is a high risk of the passenger not keeping to the terms of a temporary admission; and
- ii. where it appears that an intending traveller likely to be refused entry has been advised directly or indirectly that if he arrives an MP will nevertheless make representations to procure temporary admission [see paragraph 18].

No written representations received within the time limit

7. In the event of written representations not being received in the Home Office within 10 working days the Minister's Private Office will instruct the Immigration Service to proceed with the passenger's removal as soon as practicable.

Receipt of written representations to the Minister

8. On receipt within that time of written representations, challenging the facts of refusal, or questioning the decision on the basis of those facts, the Minister's Private Office will arrange for the deferment of removal and for the passenger's temporary admission, if appropriate, to be extended until the Minister has had the opportunity to review the case.

Decision reversed by the Minister

9. If the Minister decides to reverse the refusal decision, the Minister's Private Office will instruct the Immigration Service to grant the passenger leave to enter. At the same time the Minister will inform the Member in writing of the decision.

Decision upheld by the Minister

10. If the Minister upholds the refusal decision the Minister's Private Office will notify the Immigration Service of the outcome. At the same time the Minister will inform the Member in writing of the decision. The Immigration Service will not, however, effect the removal of the passenger before 4 working days have passed from the date of the Minister's reply to the Member. Removal will not normally be further deferred unless new and compelling evidence is received within that timescale.

Representations made on after-entry cases

Appeal rights

11. In after-entry cases a statutory right of appeal is exercisable in this country, unless the decision relates to an application made after a person's leave to remain has expired or to the removal of an illegal entrant.

Cases where an appeal is pending (either against the refusal to grant further leave to remain or against a decision to deport)

12. When an appeal is lodged no action is taken to remove the appellant until the appeal proceedings have been completed and the determination has been considered by the Home Office. The Minister will not normally intervene while an appeal is pending and there is therefore little point in a Member making representations at this stage.

Cases where an appeal has been dismissed

13. Even if the appellate authorities dismiss an appeal a recommendation may be made and any such recommendation will be seriously considered by the Minister. If, however, the appellate authorities dismiss an appeal and do not feel it is

appropriate to make a recommendation, the Minister is unlikely to overturn that decision unless new and compelling evidence is provided..

Cases where there is no right of appeal or where the right of appeal has not been exercised

14. Representations may be considered in cases in which either the right of appeal against a decision has not been exercised or if the law provides no right of appeal. Due account will be taken, however, of the reasons why there was no right of appeal or why an appeal right was not exercised, and the Minister is unlikely to reverse the decision unless the Member raises any significant or compelling factors which were not known when the decision was taken.

Last minute 'stops' in deportation/illegal entry cases

15. Removal arrangements will not be deferred as a result of a Member saying he wishes to make further representations unless he provides new and compelling evidence to justify such deferment. In the latter case he will be asked to submit written representations within 5 days and advised that removal will be deferred for that period. If written representations are not received within this period, the Minister's Private Office will give instructions for the removal arrangements to be implemented.

THE ROLE OF MPs

The Constituency Member

16. It is not for the Home Office to police the convention that Members of Parliament do not take up cases involving other Members' constituents, but the Home Office will not normally accept a request to defer removal from anyone other than the person who appears to be the constituency Member.

Members with special interests

17. Ministers recognise that Members with a known specialist interest in the problems of particular national groups do sometimes wish to raise matters including immigration matters touching on the welfare of those nationals, but in hearing any such representations Ministers assume that the Member making the representations has consulted the constituency Member. A copy of any reply sent to the Member will be sent to the constituency Member.

Advice to or for Persons Abroad

18. If a person intending to travel to this country has doubts as to whether he will be admitted he can apply for entry clearance abroad even when entry clearance is not required by the Immigration Rules. A Member may well tell a constituent that if a relative or friend who is intending to travel runs into difficulties he can be contacted so that he can look into the case. But the Home Office has a duty not to allow temporary admission to be used as a device to enable someone to visit the United Kingdom even though an immigration officer has refused him leave to enter under the Rules, and immigration officers will be slow to grant temporary admission if it appears that an intending traveller likely to be refused entry had been advised directly or indirectly that if he arrives an MP would nevertheless make representations to procure temporary admission.

House of Lords

19. The Home Office recognises that Members of the House of Lords do sometimes wish to make representations in individual immigration cases. In hearing any such representations Ministers will assume that the Peer concerned has consulted the constituency Member and will send the constituency Member a copy of any reply. If the constituency Member has already taken up the case the Peer will be so told and he will be sent a copy of the reply to the constituency Member.

Immigration
Rules

PTZ

