

**INQUIRY
INTO HANDLING OF ECAA APPLICATIONS
FROM BULGARIA AND ROMANIA**

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INQUIRY INTO HANDLING OF ECAA APPLICATIONS FROM BULGARIA AND ROMANIA

PART ONE: SUMMARY

Terms of Reference

1.1 This is the Report of the further inquiry announced by the Home Secretary on 30 March 2004 into the handling of applications under the European Community Association Agreements (ECAA).

1.2 The report of my earlier investigation into the handling of ECAA guidance was published on 25 March 2004. That report dealt with the allegations which followed the disclosures made by a civil servant in the Immigration and Nationality Directorate (IND) of the Home Office, that there had been a deliberate policy to relax the checks on ECAA applicants in the run up to EU accession on 1 May 2004. It had been alleged that Ministers must have authorised the relevant changes in guidance.

1.3 On 30 March 2004, the Home Secretary asked me to examine the further allegations that had been made by James Cameron, the Entry Clearance Manager (ECM) and Consul in Bucharest, to the Shadow Home Secretary, the Rt Hon David Davis, MP. In the Debate in the House of Commons later that day, David Davis said that the central allegation was of “a massive, well organised migration scam that civil servants had drawn to the attention of the Home Office but Ministers did nothing about it” [*House of Commons Hansard Debates, Column 1431*].

1.4 This Report covers that central allegation. It also deals with the related allegation that the reduction in the number of people claiming asylum was attributable to applications being “waved through” under the ECAA scheme. The implication was that the granting of ECAA applications, in the circumstances reported, was part of the effort being made to achieve the target for a reduced level of asylum applications that had been announced by the Prime Minister.

1.5 This Report does not cover the position of James Cameron in relation to the law on whistle blowers: the Foreign and Commonwealth Office (FCO) are considering the issues relevant to that. This inquiry did not deal with the sequence of events involving the way in which James Cameron’s disclosures became public because, in my judgement, to have done so would have risked prejudicing the separate investigation. This Report deals, instead, with the substance of the allegations made and, in doing so, explains what Ministers knew about the position.

1.6 I conducted the inquiry with Joyce Irvine (IND) and with support from other officials in IND and in UKVisas (the unit responsible to Ministers in FCO and the Home Office for the administration of the visa system).

Background to the ECAA category

1.7 The ECA Agreements provide a right of establishment for nationals of ten countries in Central and Eastern Europe, including Bulgaria and Romania. The first such Agreements came into force in 1994.

1.8 As a result of the Agreements, nationals of the relevant countries, when seeking to set up in business or as self employed, must be treated no less favourably than nationals of the host State. The Agreements do not confer a right of access to the labour market of the host State. Moreover, the operation of the Agreements can be limited by national rules governing entry and

residence. This is subject to the proviso that those national rules must not make it impossible or excessively difficult for the right of establishment to be exercised.

1.9 The UK's national rules include a requirement for prior entry clearance before applicants travel to the country. By agreement between the Home Office and FCO, Entry Clearance Officers (ECOs) have sought authorisation from IND for decisions on entry clearance in this category but have conducted part of the process locally. UKVisas has taken responsibility for the workload issues that have arisen accordingly for overseas posts, including the impact on other work.

1.10 The national rules also allow for people already in the UK, lawfully, to "switch" into the ECAA category. The position of those people who arrive in the UK without entry clearance and who wish to exercise their right of establishment under these Agreements, has been clarified in a number of judgments reached by the European Court of Justice (ECJ). Those judgments followed challenges to decisions to refuse ECAA applications dating back to the period between 1996-97.

1.11 The main tests to be applied focus on testing whether there are sufficient funds, under the applicant's control, for them to set up a business that will generate enough profit to avoid their having to rely upon the benefits system or other unrelated jobs. Similarly, the rules test that the applicant has funds that are sufficient for their accommodation and maintenance, and that of any dependents, in the period before the business or self employment is generating income – without their having to turn to another job or to the benefits system.

1.12 The process leading to settlement in the ECAA category is a phased one. That is to say, an initial successful application will result in the granting of "leave" for up to 12 months. Towards the end of that period, another application can be made which, if granted, leads to a further period of leave, this time for up to 3 years. It is only at the end of that period that those who have successfully established themselves in business or as self employed can be granted what is called "indefinite leave to remain". These people are then free to remain in the UK lawfully and permanently.

Key findings

1.13 There has been a significant increase in applications in recent years, including more than a doubling in applications from Bulgarian and Romanian nationals. The inquiry has looked at how those applications were submitted and decided and has established the following 6 key findings.

First key finding: exploitation of the scheme

1.14 The inquiry has confirmed that the ECAA category has been exploited in the sense that many Bulgarian and Romanian nationals have been helped to make applications to set up in business or as self employed, in the UK. In effect, many applicants have been sold a service that includes pro forma business plans. Through this technique, some legal representatives have helped many applicants to successfully present themselves, in person and in writing, in a way which has exaggerated their ability to meet the UK's national rules for setting up in business under this scheme, when it is likely that, in practice, their real purpose was simply seeking work in the UK whether formally in a self employed or in a paid capacity.

1.15 As a result, there are now Bulgarian and Romanian nationals in the United Kingdom who are unlikely to have been able to demonstrate that they could successfully set up in business here if their applications had not been manufactured for them. But, because of the stages in the process leading to settlement, only around 150 Bulgarian and Romanian nationals in total have been granted "leave to remain", for an indefinite period, over the last 2 years or so. For the others, the recommendations in this Report, if implemented, will allow IND to consider carefully whether they should be allowed to remain in the UK permanently or should be removed if they are not meeting the requirements of the Immigration Rules.

Second key finding: conflicting views on the legal criteria

1.16 The second key finding is that officials handling ECAA applications have been sharply divided in their view of the relevant law. The period since 2001 in particular has been marked by a conflict between two approaches. Entry clearance staff in Sofia and Bucharest favoured an approach which, if adopted, would have meant that the majority of applicants would have been refused. Home Office staff in IND thought that refusals on that basis would be unsustainable in law and took an approach under which the majority of applicants were granted. The Home Office view prevailed – but the tension between the approaches continued and remains to be resolved.

Third key finding: Agreements allow for a more challenging process

1.17 The third key finding is that, while the requirements for a successful application are not high, especially for self employment in a lower skilled trade, the law would support a more questioning and challenging approach than has been taken in the past. The problem over the ECAA category can therefore be resolved through changes in the way decisions are taken which do not require primary legislation or amendment to the Agreements. This inquiry has taken legal advice which indicates that the law would support this change of approach. The principal changes recommended accordingly are as follows:

- the introduction of a more robust process for deciding applications for entry clearance, with those decisions being taken by entry clearance staff on the basis of local inquiries, not by Home Office staff working from the UK;
- the reinstatement of interviews, in Sofia and in Bucharest, for some or all of the cases;
- the use of an application form that avoids the presentation of pro forma business plans;
- the preparation of new guidance, drawn up by the Home Office, FCO and UKVisas, working together, with no new decisions being taken until that guidance is in place;
- the re-writing of the relevant Immigration Rules, to achieve greater clarity – though this need not hold up the introduction of the more robust process and taking new decisions under that process;
- the tightening of the approach taken towards decisions on applicants already in this country who want to switch into the ECAA category. Only those who “clearly and manifestly” meet the requirements of the rules should be accepted for switching. Others should make their application from the relevant post. This will avoid the circumventing of the requirement for prior entry clearance in this category;
- better training for caseworkers in the assessment of financial accounts and of other business documents. This will help to ensure that only those applicants who have genuinely and successfully established themselves in business or as self employed are granted further leave to remain and, subsequently, indefinite leave to remain.

In order to establish the new approach to decisions, successfully and consistently, a team comprising Home Office, UKVisas and FCO staff should visit Sofia, Bucharest and Sheffield.

Fourth key finding: forged documents

1.18 The inquiry has looked at the suggestion that IND has decided to grant applications despite the fact that the applications included false documents. The suggestion relates to forged or falsified supporting documents not forged passports: the inquiry has found no evidence to suggest other than an appropriately serious view being taken by IND caseworkers where they suspected that the passports or relevant travel documents were forged. Moreover, though ECOs had their suspicions earlier, the evidence confirming that some bank statements in support of applications were falsified has emerged only recently, linked to the work of the Immigration Liaison Officer, appointed in Bucharest in early December 2003.

1.19 Nevertheless there are grounds for concern. The point is that IND officials did not regard some supporting documents as relevant to their assessment of the case, where these related to the previous employment record of the applicant. They took the view that question marks over the authenticity of previous employment documents were immaterial and that they should continue to look at whether there was other evidence that the applicant satisfied the rules and they granted applications where they concluded that there was such evidence. The more robust approach to decisions recommended in this Report would result in handling these issues differently. Beyond this, there is an undoubted need for fresh guidance on detecting forged documents, covering the full range of travel documents and supporting documents and this is recommended.

Fifth key finding: action taken through intelligence-led operations

1.20 The fifth key finding is that the tension between the favoured approaches remained but that some action has been taken to counter those abusing the scheme. The conflict between the approaches did not preclude action being taken and a number of intelligence-led operations have been instigated over the period. The posting of the Immigration Liaison Officer to Bucharest last December, described in paragraph 1.18, with a much wider brief, has developed understanding of the extent of the manufacturing of the applications. The work of the Immigration Liaison Officer has been instrumental in crystallising understanding of the problem, including developing the evidence that some applications have involved forged, supporting documents – bank statements and employment records. The Immigration Liaison Officer has gone on to prompt action against those representatives who have stepped beyond legitimate help for applicants.

Sixth key finding: asylum

1.21 The inquiry has established that the handling of ECAA applications was not motivated by the drive, on the part of IND, to halve the level of asylum applications. It was motivated, instead, by the genuinely held view of its officials that the law determined that applications should be decided in a particular way.

Other findings and recommendations

Recommendation for briefing for Opposition

1.22 Some intelligence-led operations have been mounted and have included an arrest made in late February 2004. A very limited amount of information about the operations that are currently under way can be made available publicly without prejudicing investigations and the prospect of prosecutions. In order to avoid these risks, but, at the same time, to make available the relevant information, it is recommended that the Home Secretary should offer the Shadow Home Secretary a briefing, on Privy Councillor terms, covering the intelligence-led operations

investigating ECAA abuse. A similar confidential briefing should be offered to the Liberal Democrat spokesman for Home Affairs.

The Reflex Programme and organised crime

1.23 The Reflex programme tackles organised immigration crime. This inquiry has been impressed by the excellent progress made with and by the Romanians through this programme, since its inception two years ago and through the appointment last December of the Immigration Liaison Officer. The inquiry also notes the fact that a similar project is under way in Bulgaria. A combination of the IND operations with other agencies in the UK and developments linked to Reflex, in Bulgaria and Romania, will help to establish and combat any links between the exploitation of the ECAA category and organised crime.

1.24 It is recommended that funding allocated to the Reflex Romania programme should be reviewed to see if it is possible to build more rapidly on the progress already made. The plans for and the funding of the equivalent programme for Bulgaria should be examined with a view also to building up that programme. It is also recommended that further investigations should continue to be undertaken by IND and other agencies to establish any links between this category and illegal gangmaster activity within the UK.

1.25 These recommendations are not limited to Bulgarian and Romanian nationals. This is because, while this inquiry has not looked in depth at the operation of the ECAA category with nationals of the countries that have now acceded to the EU, this should not be taken as implying that the activities described in the Report have been necessarily confined to Bulgaria and Romania.

Managing intelligence priorities and reporting to Ministers

1.26 Recent developments in IND's internal management of intelligence and how it prioritises the appropriate counter measures, are to be welcomed. IND should further review its internal arrangements for handling intelligence and tasking officials to take the necessary action. The review should ensure that, in practice, there is an effective structure in operation, extending to all parts of IND. The review should take the opportunity of considering further the reporting to Ministers of operational developments in intelligence-led operations.

Applicants wanting to work

1.27 The inquiry has found that many applicants under the ECAA scheme have been successful who may not have been if a more robust approach had been taken toward their cases. But this is not the same as saying that the people who have come here as a result have not made a contribution in the UK. The inquiry has not tracked down all the applicants and cannot, therefore, be categorical about the precise position on this point. However, the inquiry has looked at a sample of those applicants already in the country. On the basis of that, and on the basis of looking at the nature of the applications, I have seen no evidence that people coming here under the scheme are not working, whether in their own business, as self employed or in paid employment. Many will be working in sectors of the economy where there are labour shortages or recruitment difficulties.

Programme management linking IND and UKVisas

1.28 In order to help ensure that there is no repetition of an issue involving conflict between IND and entry clearance staff, as well as for wider reasons, UKVisas should be represented on IND's programme management structure at its most senior Board level.

Turkey

1.29 In view of the separate Agreement with Turkey, plans should be prepared taking account of experience under the ECA Agreements for handling applications from Turkish nationals when the current legal challenges are resolved.

Conclusion

1.30 The concerns of entry clearance staff about the operation of the ECAA category has been known to officials in parts of IND in the Home Office since 2001. Some intelligence-led operations have been mounted and that fact means that the allegation that no action was taken is wrong. However, the dispute between the respective approaches of the entry clearance staff on the one hand, and IND staff on the other, was not resolved satisfactorily. Without that, the intelligence-led operations could only deal with part of the problem: even where the activities of key individuals are disrupted, others can move into the same niche unless the problem over decisions is itself tackled.

1.31 This inquiry has concluded that at the heart of the problem was a conflict of view over the law. The conviction of Home Office officials that their view of the law was correct explains why senior officials did not do more to question the issue when it was reported to them. But it also explains why Home Office Ministers were briefed in the way they were: Home Office caseworkers and other officials with the relevant responsibility for advising on policy believed that the ECA Agreements, as clarified by the ECJ in 2001, allowed no room for a tougher approach. The Agreements had been in place under successive Governments and the mindset of Home Office officials was that the result - increasing numbers of applicants meeting, as they saw it, the minimal requirements - was a fact of life and, at least in part, to be expected in the lead up to accession.

1.32 In fact, in the judgement of this inquiry, having taken legal advice, the law would support a more robust and challenging approach to applications. Introducing that approach, while maintaining the purpose of the Agreements, is the task that now remains.

PART TWO: THE PROBLEM

Background to the ECAA category

2.1 European Community Association Agreements are in place between the European Community and ten countries in Central and Eastern Europe, including Bulgaria and Romania. The first of these agreements, with Poland and Hungary, came into force in 1994. Agreements with Bulgaria and with Romania were among those which were brought into force in 1995. There are also agreements in place with Turkey, Malta and Cyprus.

2.2 A right of establishment is provided under the ECA Agreements. But the Agreements do not and are not intended to confer a right of access to the labour market of the relevant Member State. The right of establishment they do provide is that, nationals from Central and Eastern European countries seeking to set up in business or as self-employed in a Member State, shall be treated no less favourably than nationals of that Member State setting up there in business or as self employed. Rights of entry and residence are conferred on nationals from the Central and Eastern European countries as corollaries of the right of establishment. The exercise of these rights, however, can be limited by national rules governing entry and residence, provided that the national rules do not make it impossible or excessively difficult to exercise the right of establishment.

2.3 The requirements to be met by applicants wishing to exercise their right in this respect in the UK are set out in paragraphs 211 – 223 of the Immigration Rules. Those Rules focus on testing whether there are sufficient funds, under the applicant's control, for them to set up the business that would generate enough profit to avoid their having to rely upon state benefits or on other unrelated jobs. The Rules make a point of testing that the applicant has funds that are sufficient for their accommodation and maintenance, and that of any dependents in the period before the business or self employment is generating income – without their having to turn to another job or to state benefits. But the amount of funds is not laid down and applying this test is therefore left to the judgement of officials. The funds necessary to establish one kind of enterprise could be relatively small while others could require a significant initial investment.

2.4 The Rules require those applying from overseas to obtain entry clearance for the purpose. It is also possible for those already lawfully in the UK, for example as students or visitors, to "switch" into this category.

2.5 The process leading to settlement in the ECAA category is a phased one with the following stages. An initial successful application made either from abroad or within the UK will result in a grant of "leave" for a period not exceeding 12 months. Towards the end of that period, an application can then be made for "further leave" for a period of three years. At the end of this period, those who have successfully established themselves in business or in self employment may apply for "indefinite leave to remain" in the UK.

2.6 The ECAA category is one of a number of categories open to those wishing to engage in business or employment in the UK. Other categories tend to have more objective requirements: for example, an investor wishing to locate in the UK has to have at least £1 million to invest.

The scale of applications

2.7 The inquiry has looked at the whole of the period since the first of the ECA Agreements in 1994. But the key period is the last three years. In that time the number of applications has grown very markedly. The available information is given in paragraph 2.8 below. Those figures reflect the growing numbers of people wanting to make use of the ECAA route over this period. The growth in numbers covers Bulgarian and Romanian nationals and also nationals of the countries that acceded to the European Union on 1 May 2004. But these figures need to be

viewed carefully if their impact is to be understood accurately. Three points, in particular, are worth making.

- (i) The first is the implication of the phased process of decisions in the ECAA category, as described in paragraph 1.12. As paragraph 2.4 explains, in addition to those applicants who apply for entry clearance, there are others who switch into the ECAA category, having entered on another basis. Either way, the initial application, if granted, is for 12 months' leave and does not allow an applicant to remain in the UK permanently. A second subsequent application, if successful, entitles an applicant to remain in the UK for a period of up to 3 years. It is only after that period that an applicant who then makes a further successful application can remain in the UK permanently. What this means is that, of the rising number of applicants in recent years, only a relatively small number have benefited from the scheme, to the point where they have been granted indefinite leave to remain. On the basis of the figures provided by IND, the inquiry believes that the number of Bulgarian and Romanian nationals who have secured their position, through the ECAA, in the last two years or so, and who have been granted "leave to remain", for an indefinite period, is around 150.
- (ii) The majority of the rising number of applications made in the ECAA category, in the last two years or so, are nationals of the countries that have now acceded to the European Union, as distinct from the two – Bulgaria and Romania – who have not acceded to the EU. What this means is that the majority of people who have benefited from the ECAA scheme over the last two years would enjoy the right of free movement to the United Kingdom now, anyway, as a result of accession.
- (iii) It is important to remember that the numbers for total applications given in paragraph 2.8 relate to applications, not individuals. Applicants who were granted leave to enter or to remain, as a result of the ECA Agreements in 2001 and 2002 and the early part of 2003, will be among those counted in these figures for a second time when they applied for further leave to remain. And it is important to avoid a different kind of double counting if the numbers of applicants who have switched into the ECAA scheme is considered alongside the number of Bulgarian and Romanian nationals who have come here as visitors, students and under the Seasonal Agricultural Workers scheme. Care is needed to avoid double counting applicants who have switched from those categories into this one. So the number of people affected by the operation of the ECAA category is overstated by figures for applications in total and the effect would be overstated again if these figures were simply added to those for these other schemes.

2.8 The information available for the period before April 2002 is limited but it suggests that there were around 8,000 such applications in the twelve month period to January 2002. The data provided by IND shows that there were nearly 20,000 applications in 2002/3, of which over 7,400 were from Bulgarian and Romanian nationals. The number of applications doubled to over 40,000 in 2003/4. Of the 60,000 applications in that 2 year period, around 24,000 were from Bulgarian and Romanian nationals, some 40% of the total.

2.9 The points made in paragraph 2.7 should not be taken as minimising the importance of the issues facing this inquiry. The figures for Bulgaria and Romania are significant. In the last two year period, taken as a whole, there have been over 17,500 applications from Bulgarian nationals and nearly 6,800 applications from Romanian nationals. Where those applications are successful, the dependants of the successful applicants will also benefit. Therefore, it remains important to get the category right, now, because of the position of Bulgaria and Romania and to continue to investigate the activities of those involved in the applications of the wider group of countries.

The nature of applications

2.10 The inquiry has looked at the characteristics of the individual applications and how they have been submitted and has established the following:

- applications have been made in near identical form. Most Bulgarian and Romanian applicants have said that they propose to set up in business or as self employed cleaners, builders, carpenters or electricians. While there are some variations in the details provided, the common use, not just of the same template, but of the same content, demonstrates that they do not reflect the individual's own circumstances;
- there is therefore evidence, which the inquiry accepts, that the similarity between applications is a sign of the role played by a relatively small number of legal representatives and that the applicants have been encouraged to apply in this category and in this way, in order that they may realise their ambition of coming to live and work in the UK. In effect, a service has been sold to applicants which has included pro forma business plans;
- that the allegations about ignoring the applicants' lack of previous experience, their previous immigration history and the inclusion of potentially forged documents reflect a conflict of approach. Officials remained sharply divided as to whether the law would support decisions to refuse applicants on the basis of these considerations if their applications appeared to meet the requirements of these particular Agreements and the Rules focusing on the adequacy of funding.

2.11 As a result, the problem that has arisen over the handling of ECAA applications can only be understood and addressed through unpacking that conflict of view over the law. This is covered in Part Three of this report. Without understanding the conflict of view, it would simply not be possible to comment accurately on the problem and on what now needs to be done to put it right. As part of that, the fact that the ECAA scheme covers applicants who want to be self employed, as well as applicants who want to set up in business, must be understood. The conflict of view, and in particular the view taken by IND, becomes explicable when that is understood.

First key finding: exploitation of the scheme

2.12 The inquiry has confirmed that the ECAA category has been exploited in the sense that many Bulgarian and Romanian nationals have been helped to make applications to set up in business or as self employed, in the UK. In effect, many applicants have been sold a service that includes pro forma business plans. Through this technique, some legal representatives have helped many applicants to successfully present themselves, in person and in writing, in a way which has exaggerated their ability to meet the UK's national rules for setting up in business under this scheme, when it is likely that, in practice, their real purpose was simply seeking work in the UK whether formally in a self employed or in a paid capacity.

2.13 As a result, there are now Bulgarian and Romanian nationals in the United Kingdom who are unlikely to have been able to demonstrate that they could successfully set up in business here if their applications had not been manufactured for them. But, because of the stages in the process leading to settlement, only around 150 Bulgarian and Romanian nationals in total have been granted "leave to remain", for an indefinite period, over the last 2 years or so. For the others, the recommendations in this Report, if implemented, will allow IND to consider carefully whether they should be allowed to remain in the UK permanently or should be removed if they are not meeting the requirements of the Immigration Rules

PART THREE: THE DECISION MAKING PROCESS

A. How the process has developed

The process for entry clearance applications

3.1 The processing of applications in business categories has always differed from other immigration categories where entry clearance is required. For ECAA and other business categories, there has been in place a system of referral to IND for consideration and authorisation before entry clearance is issued. IND established a specialist unit in Croydon, the Business Case Unit (BCU), to handle these categories. ECOs in UK embassies, high commissions or consular offices abroad (posts) would receive applications, possibly arrange an interview, and then refer the case to the BCU. The guidance available to ECOs describes this as a “mandatory referral”.

3.2 The number of applications being made at posts abroad was relatively small during the 1990s and so the number of referrals made to Croydon was also small. The specialist caseworkers in Croydon could therefore spend considerable time considering each case, and requesting any further information and evidence they required to consider it fully. These caseworkers also considered applications made for switching from those already in the UK on a different basis, and for further leave and for indefinite leave to remain.

3.3 As the number of applications began to increase in 2000 and 2001, the process for applicants requesting entry clearance at a post abroad had evolved and was as follows:

- (i) the applicant or his representative would deliver the application to the post abroad. The application would be screened quickly by counter staff in the Visa Section;
- (ii) the applicant would then be invited to attend an interview which would be conducted by an ECO. An interpreter would also be available if required. During this interview, the applicant would be asked detailed questions about their application, including the content of their business plan. The purpose of the interview was to allow the ECO to assess whether the application was a credible one, and to allow the ECO then to provide information to assist the IND caseworker in their consideration of the case;
- (iii) the application and any additional information provided by the ECO would then be forwarded to the BCU in Croydon;
- (iv) the IND caseworker, on receipt of the paperwork, would consider all available information and decide whether the case met the requirements of the Immigration Rules in respect of the ECAA category;
- (v) if the requirements were met, the IND caseworker would inform the applicant and/or their representative of their view in writing. It would then be for the ECO to issue the appropriate entry clearance;
- (vi) if the requirements were not met, the IND caseworker would inform the applicant and/or their representative and the post of this and would, at the same time, provide information about any right of appeal.

3.4 This process worked reasonably well for a period. However, as the volumes of applications continued to increase, particularly in Sofia and Bucharest, the length of time it was taking for applications to be processed began to lengthen. Applicants were having to wait several months for interview by an ECO in the post abroad, and then, once the interview had taken place and the case had been forwarded to IND, it was taking several months before it was being

allocated to an IND caseworker for consideration and authorisation. The end to end process was, for a period, taking longer than six months. Officials became concerned that the time being taken for dealing with these cases could lead to Judicial Review.

3.5 It was also during this period that the differences in approach between posts abroad and IND caseworkers were becoming marked.

3.6 Whilst posts continued to interview and make recommendations for refusal based on the overall credibility of the applicant, IND caseworkers continued to grant the majority of these cases based on their strict interpretation of the requirements of the Immigration Rules. This, in effect, meant much of the work being done in posts was a waste of time. Sir John Ramsden, Head of Central and North West Europe Department, FCO, visited Sofia at the end of October 2002. He wrote to Chris Mace (Deputy Director General, IND) on 5 November 2002. In his letter he said it was clear that the ECAA scheme had developed into an organised scam. He reflected the experience of entry clearance staff in interviewing applicants and the frustration felt.

3.7 On receipt of Sir John Ramsden's letter, Chris Mace had asked for work to be done to tighten up the policy and its operation and for investigations to be made into the relevant legal firms. Section A of Part Four of this Report refers to intelligence-led operations which have been instigated over the period. Paragraphs 3.27 - 3.48 explain the view taken by IND on how decisions, under this scheme, had to be taken. This limited what could be said in reply to Sir John Ramsden. The official who replied to Sir John Ramsden reflected that view, but went on to say that IND officials would shortly be meeting with UKVisas to see what else might be done.

3.8 On 3 January 2003, Sir John Ramsden replied saying that, if the case law was such that people were really entitled to use the ECAA scheme in the way he had witnessed in Bulgaria, then so be it. He looked forward to hearing the results of the IND/UKVisas meeting.

3.9 A joint visit to Sofia by staff in UKVisas and IND was arranged for March 2003 to go through the process in detail and to consider what could be done to streamline it. This was particularly important as there was then a real threat of a Judicial Review on the basis of the length of time that was being taken to process ECAA applications. James Cameron attended the meeting in Sofia. During their visit, IND officials attempted to explain that they did not believe that decisions to refuse applications, using the approach the entry clearance staff wanted, could be sustained.

3.10 As a result of that visit, proposals for change to the process were taken forward. If it was the case that the IND approach with its strict application of the rules was to prevail, then it was clear that requiring the applicant to attend for an interview in the post abroad added no value. As well as its impact on the workload of entry clearance of staff, a considerable delay was being added to the process. By the time the IND caseworker received the application pack some of the information, for example bank statements showing evidence of funds, could be out of date by six months or more.

3.11 It was decided therefore to stop interviews in the posts abroad from March 2003. As a safeguard, the new arrangement deliberately provided that posts would still be free to feed in any concerns, or new information, before entry clearance was given.

3.12 A more radical option was also being developed. If the posts were to do little more than receive, record and forward applications to IND, then it should be possible, with some re-design of the process, for applicants or their representatives to lodge their applications direct with IND in the UK.

3.13 In early 2003, some aspects of the position on ECAA applications were brought to the attention of Home Office Ministers.

3.14 Bob Ainsworth, then Parliamentary Under Secretary of State at the Home Office with responsibility for Drugs Co-ordination and Organised Crime, visited Bulgaria and Romania (and Turkey) between 17 and 22 February 2003. Both posts raised with him their concerns about the abuse of the ECAA system.

3.15 On 4 March 2003, Bob Ainsworth wrote to Beverley Hughes, then Minister for Immigration and Citizenship, about his visit. In the course of his letter, he described the concern of posts as it had been reflected to him. He talked about applications being routinely facilitated by UK solicitors providing pro forma business plans and about cases being referred to IND and being granted despite posts' reservations about the individual, on the basis of both the pro forma business plan and immigration history.

3.16 He also passed on the suggestion that the decisions on entry clearance might be taken by posts without them being referred to IND, since the posts were keen to take and defend their own decisions. (His letter raised two other issues to do with organised crime and immigration abuse in Bulgaria.)

3.17 Bob Ainsworth's letter was not copied to the Home Secretary. When it was received in Beverley Hughes' office, an e-mail was sent to officials in IND asking for urgent advice on it. That e-mail was not copied to the Home Secretary personally. It was copied to the Home Secretary's office, as a matter of routine, but because the letter was addressed to Beverley Hughes, and not the Home Secretary, responsibility for action lay between her office and IND. Beverley Hughes wrote to Bob Ainsworth on 17 March 2003 to confirm that she had raised the issues with IND and would reply shortly. Her subsequent reply on 10 April 2003 reflected the continuing IND view that its approach was determined by the prevailing European law - as explained in paragraphs 3.27 - 3.48 below. The officials advising Beverley Hughes on this correspondence believed that there was no alternative to the approach they were taking on decisions and they provided advice accordingly. The advice reported that the proposal that these cases might be decided locally, rather than being referred to IND, was still being considered. Neither Bob Ainsworth's letter nor the subsequent submission made reference to James Cameron, forged documents or to applicants in the UK switching into the ECAA category.

Tracking of cases referred by posts to IND and new "direct applications" on ECAA cases

3.18 Further consideration of changes to the process for ECAA applications became connected with a wider initiative covering the wider spectrum of immigration cases. In the light of concerns expressed, including by Members of Parliament, about delays on individual cases where posts had referred issues to IND, Beverley Hughes instigated work to improve the system. UKVisas took the lead in developing a new tracking system.

3.19 In doing so, UKVisas led work on the introduction of a single unique reference number at the start of the process to be used by all parties. At the same time, UKVisas pressed IND to implement the change to the ECAA process, so that these applications would be made directly to IND, and would not be subject to prior referral by posts. The new tracking system was developed and then introduced with effect from 10 January 2004. By that time, agreement had been reached with IND that entry clearance applications in the ECAA category would be submitted directly to IND, with effect from 1 March 2004.

3.20 It is important to note that whilst all of this was being considered, another significant change had happened in the handling of ECAA work within IND. The General Casework Group in IND had expanded and a second caseworking centre was established in Sheffield. It had been agreed that ECAA work would be dealt with jointly by Sheffield staff and Croydon-based staff from April 2003, and that by August 2003 once Sheffield would have established its own dedicated ECAA team, Sheffield staff would take full responsibility for all ECAA casework.

3.21 It was Sheffield staff who were therefore considering in detail the proposals for a direct application process for the ECAA category. Two members of the Sheffield team visited Bucharest in August 2003.

3.22 Sheffield staff raised a number of concerns about their ability to carry out detailed checks of information being provided by applicants, and expressed reservations about whether the direct application process would be more streamlined. They foresaw that if they had concerns about applications they would, in practice, be able to do nothing other than ask ECOs in the posts abroad to carry out checks, thereby adding a stage to the process. And, without those checks being done, they would be unable to carry out a full consideration of the application. It was therefore with some reluctance that they agreed to the implementation of the direct application system, with effect from 1 March 2004. In doing so, and as a safeguard before applications were submitted directly to IND, there was an understanding that the posts in Sofia and Bucharest would both provide briefings to help Sheffield staff take on the new role and would allow representatives of the Sheffield team to work alongside them, as part of their preparation. In the event, there were delays in putting these preparations in place and no decisions had been taken under the new process by the time all decisions on ECAA cases were suspended in March 2004.

The process for in country applications

3.23 In common with the approach taken for other immigration categories, it is IND's staff who consider applications from those already in the UK to switch into the ECAA category. The process for this is paper-based - there has never been a mandatory interview for this type of ECAA application.

3.24 The majority of applications from the accession countries have been made this way, and it has become in the last two years increasingly popular also with ECAA applicants from Bulgaria and Romania. In total, for the two year period from April 2002 to March 2004, around 31,000 applications were made to switch into this category, of which under 8,000, or around 25%, were from Bulgarian and Romanian nationals. These figures are part of those given in paragraph 2.8, not additional to those figures.

3.25 It is evident to this inquiry that the consideration of these applications by IND has not been sufficiently joined up with the role played by staff at posts on entry clearance applications. Ideally the posts abroad should have been informed that applications were being made to switch into this category, and staff in posts abroad should have been given an opportunity to inform the IND caseworker of any factors they considered relevant. In the absence of these links, ECOs usually only became aware of such applications when the dependents of the successful main applicant now established in the UK, applied to join him or her in the UK. This was the source of considerable frustration for the ECOs, particularly if their further checks revealed that the main applicant had only had a visa for a short, say, two week period, to enter the UK for a specific purpose, for example to attend a football match or some other specific event. This is described in more detail in paragraph 3.35.

3.26 Within the last year, IND has made a significant change in this respect. If an IND caseworker now identifies that a switching application has been made on the strength of a short term visa, they take no further action other than to refer the case to an Immigration Officer (IO) for follow up action. This usually involves the IO arranging to interview the applicant and if, as can be the case, the IO is not satisfied that the reason given for the original visa application was valid, that is to say the original visa had been obtained by deception, then the IO will take the appropriate action for the applicant's removal from the country.

B. Findings and recommendations on the decision making process

Second key finding: conflicting views on the legal criteria

3.27 The second key finding is that officials handling ECAA applications have been sharply divided in their view of the relevant law. The period since 2001 in particular has been marked by a conflict between two approaches. Entry clearance staff in Sofia and Bucharest favoured an approach which, if adopted, would have meant that the majority of applicants would have been refused. Home Office staff in IND thought that refusals on that basis would be unsustainable in law and took an approach under which the majority of applicants were granted. The Home Office view prevailed – but the tension between the approaches continued and remains to be resolved.

Third key finding: Agreements allow for a more challenging process

3.28 The third key finding is that, while the requirements for a successful application are not high, especially for self employment in a lower skilled trade, the law would support a more questioning and challenging approach than has been taken in the past. The problem over the ECAA category can therefore be resolved through changes in the way decisions are taken which do not require primary legislation or amendment to the Agreements. This inquiry has taken legal advice which indicates that the law would support this change of approach

Remainder of Part Three

3.29 The rest of this part of the Report explains these two key findings, along with a further key finding on forged documents and makes recommendations for changes to the decision making process.

ECAA requirements

3.30 The ECA Agreements give rights of establishment, as Part Two explains. The relevant Immigration Rules seek to reflect this by laying down the following requirements. Applicants for entry clearance or for leave to enter must show that they:

- have, under their control, the money they are putting into the business and that the money is sufficient to establish themselves in business in the UK;
- will have sufficient funds to maintain and accommodate themselves, and any dependants, without recourse to other employment or public funds, until their business provides them with an income, and that the profits of the business will then be sufficient to do the same;
- do not intend to supplement their business activities by taking or seeking employment in the UK other than their work for the business; and
- hold a valid UK entry clearance for entry in this capacity.

The approach favoured by entry clearance staff

3.31 Until May 2003, most ECAA applicants applying from Bulgaria and Romania for entry clearance in this category would be interviewed by an ECO. During these interviews, they would be asked detailed questions about how they would, in practice, implement what was being described in their business plans. The inquiry has been told that many applicants had little awareness of how they would do so. In reaching a judgement about whether the applicant was

likely to be able to establish a business in the UK, or be self employed, the ECO would also consider:

- whether the applicant had previous experience in the business sector which now formed part of his or her application;
- whether the applicant had sufficient funds within their control to establish a business in the UK and the source of those funds;
- whether the applicant could demonstrate how they would go about the logistics of their new business;
- whether the applicant spoke English and did so well.

3.32 In addition, the posts assessed whether an applicant's previous immigration history, if any, was such as to suggest that it ought to influence the assessment of their current application.

3.33 Where, as a result of the interview, the ECO had doubts as to whether the applicant would be able to establish a viable business or be self employed, the letter accompanying the bundle of documents forwarded to IND for consideration would provide details of these doubts. Some of this information would not link directly to the requirements of the Immigration Rules. But the expectation of the ECOs was that IND would take this additional information into account in an overall assessment of the applicant's case.

Issues for entry clearance staff

3.34 In the last two to three years, one issue attracting attention in posts abroad was how applications being made from people already in the UK should be dealt with - the "switching" applications being made by visitors to the UK, students and others. ECOs tended only to become aware of these applications having been approved when the applicants' non-UK based dependants submitted applications to join them in the UK. In handling those applications, ECOs would sometimes gather information that would suggest either:

- (a) that the original visa had been obtained, in their view, by deception (for the reason given in the following paragraph); or
- (b) that the person in the UK who had switched into this category was not in the process of establishing a business or working in a self-employed capacity.

3.35 ECOs were becoming increasingly frustrated that they had not had the opportunity to be involved in the consideration of such cases. They would have granted the initial visa application for entry as, say, a student or visitor on the basis that, amongst other criteria, they were satisfied that, at the end of the period for which the visa had been granted, the person would leave the UK. But those making in-country ECAA switching applications were beginning a process which could lead to settlement in the UK; that is to say, if successful, they would not be returning home. James Cameron, the ECM in Bucharest, wrote to the BCU in Croydon in April 2002, suggesting that such applications should not be considered only by UK-based IND staff, but should be forwarded to the relevant post abroad prior to a decision being made. To do otherwise, in his view, was unjust to those applicants who had, from the outset, applied for entry clearance in the ECAA before travelling. An ECO in Sofia also wrote to the BCU in Croydon on 20 October 2002 expressing concerns about short term visitors to the UK switching into the ECAA category. In this letter, the ECO suggested that switching should be disallowed altogether and that Ministers should be consulted. The suggestion of putting this to Ministers was not pursued - paragraphs 3.13 to 3.17 explain how some aspects of the ECAA position were reported subsequently to Home Office Ministers when Bob Ainsworth wrote to Beverley Hughes.

3.36 Another issue that the posts in Bucharest and Sofia were becoming aware of, increasingly, was the role played in the process by a limited number of legal representatives. James Cameron also covered this in his April 2002 letter, where he suggested that some representatives were charging £1,500 for handling these applications. Where these legal representatives were involved, applications were becoming more formulaic, with greater similarities between them. For cases they got involved in, staff in the posts in Sofia and Bucharest continued to include, with the papers being sent to IND, letters outlining their doubts about the validity of the applications and recommending refusal.

The approach favoured by IND

3.37 IND caseworkers, on receipt of applications from abroad, tended to rely on the documents before them, as submitted by the applicant and/or representative, and adopted an approach that relied on an assessment of whether each of the requirements in the Immigration Rules for this category had been met.

3.38 The IND approach was shaped further by these considerations:

- (a) that previous immigration history could not, in itself, be used as a reason for refusing an ECAA application;
- (b) the guiding principle in the ECA Agreements ensuring that ECAA nationals are treated no less favourably than nationals of the host state setting up as self-employed in that host state;
- (c) the view that, consistent with the above, fluency in English could not be treated as an absolute requirement;
- (d) the recognition that the UK does not impose requirements on its own nationals – in terms of testing their skill levels – before they are able to start up businesses in the sectors in which ECAA applications are commonly made: cleaning, painting and decorating, building, carpentry;
- (e) the fact that many self employed people working in trades in the UK do not require any significant business assets in order to achieve that status;
- (f) the fact that applicants may have paid for help in presenting their application and that the resulting business plans followed a set template did not mean that the application could be dismissed. It should be considered on its merits and granted if the requirements in the Immigration Rules appeared to be met;
- (g) that the level of funding available to establish the business and to maintain and accommodate the applicant in the UK could, depending on the business sector, be modest.

The ECAA scheme provides for applicants who want to become self employed, not just for those who want to set up in business. That helps to explain the approach taken by IND officials, in taking on board the considerations at (b) to (g).

3.39 It is clear that IND was aware of the developing concerns of posts, including in relation to the role of legal representatives and the case of templated business plans. On the latter, it reflected that it was powerless to refuse applications on that basis (for reasons explained later in this part of the Report).

Issues for IND staff

3.40 Key issues for IND in this period, in relation to the ECAA category, arose from assessing the implications of the European Court of Justice's (ECJ's) Judgments of 27 September 2001 in the cases of Gloszczuk, Kondova and Barkoci and Malik. Those Judgments follow challenges to decisions to refuse ECAA applications dating back to the period between 1996-97. The Judgments concerned the circumstances where an ECAA applicant arrives at a UK port without entry clearance and those who are illegally resident in the UK. The Judgments looked at the circumstances in which it would be reasonable and not reasonable to remove such a person. They effectively preserved the UK's ability to apply its immigration law to ECAA applicants and with it the requirement for entry clearance.

3.41 IND took legal advice from Counsel on how to interpret this, and, specifically, on how to deal with the situation where a person, without entry clearance, "clearly and manifestly" meets the ECAA requirements. They took from the advice, received from Counsel, that removing people who satisfied the four point test (set out in paragraph 3.70 below) would not be lawful.

3.42 IND also took from the advice, the ECJ's commendation, in the cases of Kondova and Gloszczuk, of the practice of allowing applicants in the UK to switch into the ECAA category from other categories.

3.43 The Kondova Judgment, in particular, re-emphasised that Member States were prohibited from discriminating, on the grounds of their nationality, against nationals wishing to pursue, within the territory of those States, economic activities as self-employed persons, or to set up and manage undertakings there which they effectively control. This also influenced the approach taken by IND.

3.44 The outcome of the Judgments in practice was that IND maintained the approach it had been taking to switching applications, and its approach to cases referred to them by posts abroad.

Analysis of these conflicting approaches

3.45 The inquiry has looked at a number of case files held by the posts in Sofia and Bucharest, and others held by IND in Croydon and Sheffield. Drawing from that examination, this inquiry has taken legal advice on the specific issue that needs to be resolved. The key issue is whether the ECA Agreements require the UK to apply to applications in this category the approach which has been taken by IND; or whether the law requires or permits any or all of the features of the more challenging approach favoured by entry clearance staff.

3.46 The answer to this question is that, in deciding whether an applicant has demonstrated the right of establishment conferred by the ECA Agreements and ought to be given entry clearance to come to the United Kingdom accordingly, the ECO should not grant entry clearance if he or she is not satisfied that the application is a credible one and that the applicant really will be able to comply with the requirements in practice. But that does not mean that the ECO is able to refuse applications solely because of the applicant's previous immigration history; or because the applicant does not speak English; or because they have not exhibited a level of skill in the trade to which their application relates; or because their business plan looks like many others. What it does mean is that the ECO's decision should be based on a reasonable judgement, the application having been looked at "in the round", the judgement reached being one which assesses the strength of the application overall. An application to set up, for example, simply as a self employed cleaner, is still likely to succeed, provided the application as a whole is credible and that the applicant could support himself (and any dependents) until his planned activity becomes self sustaining.

3.47 The analysis is helped by looking at what happened, from March 2003, when posts stopped interviewing applicants before their applications were submitted to IND. Under the new procedure, in Bucharest, applicants were called in for interview, instead, when their applications had been considered by IND. The idea was that, if posts had reason to do so, they could refer cases back to IND, in effect, for reconsideration. On a selective basis, entry clearance staff checked references in applications; for example, evidence of funds was checked with banks and the previous employment record was also probed. Entry clearance staff in Bucharest attached importance to these checks because the results had the potential to undermine the strength of the applications. For example, checks with banks tended to show that money in accounts at the time of the application was no longer there. Recently, in a much smaller number of cases, the checks with banks revealed that the bank documentation supporting the application was not genuine. And, in some cases, the posts were able to suggest that the employment record had been falsified. Some of these cases were referred back to Sheffield for reconsideration. IND maintained its original position. But the information that ECOs unearthed in the interval between application and the issuing of a visa is instructive for this reason. It shows that information that is relevant to the tests in the Immigration Rules became available through local checking of supporting evidence.

3.48 Over time, IND's checks had become too formulaic, and that this had encouraged representatives to develop standard application packages to facilitate the process. To that extent, the application process itself has become bureaucratic. Satisfactorily assessing an individual's potential to establish a viable business in the UK is unlikely to be possible through a procedure that is entirely paper-based. I therefore recommend that the process should be changed to allow a full assessment of the case to be made, including the reinstatement of interviews, at least in some cases.

The new approach

3.49 The legal advice we now have suggests that the approach taken to ECAA applications should be based on the following:

- (a) previous immigration history may be taken into account in assessing the intention behind the application and the applicant's potential to establish the business, but a 'negative' history cannot, in itself, decide the issue. If, having taken previous immigration history into account in this way, and having applied the ECAA Requirements and the Rules, the judgement is that the tests are met, the application should be granted;
- (b) the circumstances in which the content of the business plan and the manner of its delivery, can be taken into account in that they may well undermine the credibility of the application. This will be the case, particularly, if it is apparent that the individual does not really "match up" to the profile suggested by the business plan. Relevant to this would be whether the applicant knew the content of the plan and was able to discuss how he or she intended to implement it;
- (c) fluency in English cannot be an absolute test, but it is reasonable for this to be taken into account as part of the assessment. If it is apparent that the applicant has little or no English, this should be looked at alongside the other considerations that would determine the viability of the proposed business. That is to say, someone proposing to run a painting and decorating business, as a one man band, who could speak no English, and with few assets, may find it harder to demonstrate that they would be able to establish themselves in business in the UK. But someone with otherwise convincing plans to run a business on a significant scale, or with clear skills, or with a clear plan for how they will

communicate effectively with customers, should not have their applications dismissed on the basis that their English may not initially be good enough;

- (d) adequacy of funding is an important test. And the test must be applied. But, there are genuine difficulties in doing so. Requiring details in the form of a bank statement may mean that an applicant in Bulgaria or Romania who has adequate funds, but not held in a bank account, is led into creating a new account that they would otherwise not use. Applying some sensible checking of evidence of funding, is more difficult to do from the UK.
- (e) the process must test whether the applicant's plans are fanciful. But this test should not be converted into a strict requirement for previous experience in the chosen business, in all cases. An applicant who can show clear and convincing plans that they can establish and run a cleaning business need not show that they have previous experience in that line.

The rule should be that the circumstances of the application should be looked at as a whole, to determine whether the applicant has demonstrated that they really can meet the requirements. Achieving this requires a combination of some aspects of the approach favoured by IND but incorporating many of the features of challenge favoured by entry clearance staff.

3.50 The Immigration Rules should be rewritten in so far as they cover the ECAA category. This is partly because it would be better if the position on switching was covered on the face of the Rules; and partly because a number of people we spoke to in the course of the inquiry said they found the present wording less than clear.

3.51 The rewriting of the Immigration Rules need not be undertaken before the system of considering entry clearance applications is re-started. If the recommendations in this Report are accepted, the process could be re-started, adopting the recommended approach, provided new guidance is available, to ECOs and IND caseworkers, to support that. Rewritten Immigration Rules could follow on.

3.52 The inquiry has also considered whether there remains a need for entry clearance applications to be forwarded by the posts in Sofia and Bucharest to IND for consideration. The majority of the information needed to make decisions on these cases is either held locally or is more easily obtained locally than in the UK. On that basis alone, it makes more sense for ECOs in posts abroad to take full responsibility for these cases and that is the process I now recommend.

Recommendations on entry clearance decisions

3.53 It is clear from the findings of the inquiry that the present process for dealing with applications for entry clearance in this category is not sustainable. The IND approach has not been sufficiently challenging, and it is difficult to see how a process relying solely on a UK based examination of written material provided by applicants and/or their representatives could provide sufficient evidence on which to base an entry clearance decision in all cases. Interviews, at least for some applicants, should be reinstated, and the process of referring entry clearance cases in this category to IND for consideration be replaced by a system where the decisions are taken locally by entry clearance staff.

3.54 In addition, the largely paper-based assessment process used for this category has clearly encouraged the production by representatives and others of pro forma business plans which lacked sufficient personalisation. This also encouraged a focus away from the applicant's potential to succeed in the business or self employment role outlined. The application procedure should direct applicants more straightforwardly about the information they need to supply in order

to allow ECOs to reach this rounded assessment, and should therefore facilitate a decision process based on an assessment of:

- what the stated business activity is;
- what the applicant's particular role will be and his or her ability to perform this effectively;
- whether he or she has sufficient funds to achieve this without recourse to public funds or employment;

and not on an assessment of:

- pro forma business plans with mock-up business letter heads and advertising material;
- unverifiable assertions on an individual's work ethic.

3.55 I therefore recommend:

Recommendation 1:

A more robust process for deciding applications for entry clearance should be put in place, with those decisions being taken by entry clearance staff on the basis of local inquiries, not by Home Office staff working from the UK. As part of this, interviews should be re-instated either for all applicants or where the ECO decides, on having looked at the written information, that the evidence is not clear enough to support a decision to grant or refuse EC.

Recommendation 2

An application form for the ECAA category should be introduced. The guidance attached to the application form should make it clear what supporting evidence is required. This could, in practice, avoid the need for pro forma business plans.

ECAA Guidance and the Immigration Rules

3.56 Paragraphs 211 - 223 of the Immigration Rules, setting out the ECAA requirements, were written in the mid 1990s. In the course of the inquiry, a number of people have suggested that they could be more clearly expressed, and, in any event, should be updated to reflect more recent case law. The inquiry agrees with that view.

3.57 In addition, there is a need for one commonly agreed set of ECAA guidance which sets out not only how the policy will be applied, but, also, what the respective roles and responsibilities are of all of those involved. The production of this guidance is not, in the view of the inquiry team, contingent upon the Rules being rewritten first. New, unified, guidance based on the Rules as currently drafted can be produced now.

3.58 I therefore recommend that:

Recommendation 3:

Revised unified guidance should be drawn up jointly by FCO, HO and UKVisas to reflect the content of the new approach and no further entry clearance visas should be issued until the new approach and guidance is in place.

Recommendation 4

The relevant parts of the Immigration Rules should be rewritten.

Fourth key finding: forged documents

3.59 The inquiry has looked at the suggestion that IND has decided to grant applications despite the fact that the applications included false documents.

3.60 In order to make sense of this suggestion, a number of points need to be clarified.

3.61 The suggestion does not relate specifically to forged passports or other travel documents. The inquiry has found no evidence to suggest other than an appropriately serious view being taken by IND caseworkers where there is evidence that the passport or the relevant travel document is a forgery. Indeed, General Group North, in Sheffield, was very active in taking advantage of expertise available elsewhere in IND whenever they identified any potentially forged passports or stamps in travel documents. For example, between June 2003 and March 2004, over 200 ECAA cases were referred for verification of the authenticity of the documents, rather than being decided on the available information. In preparation for the transfer of responsibility for ECAA casework from IND's unit in Croydon to its expanding unit in Sheffield, IND provided training for its caseworkers, specifically in order to help them identify forged documents which were to be referred for more specialist advice. The Sheffield team supplemented this training by drawing up new guidance for its caseworkers on detecting forged documents.

3.62 The suggestion relates, instead, to the handling of applications where, amongst the supporting documents, there may be doubts about the authenticity of the paperwork. The suspicion that the supporting documents, in some applications, have been falsified, is not a new one amongst entry clearance staff. But the evidence turning suspicions into something more definite is a much more recent development. In the case of applications referred from Bucharest, the evidence has come with the work of the Immigration Liaison Officer posted there in December 2003. IND staff in Sheffield had previously identified cases handled by one representative as requiring special care and they suspended decisions on those cases for a limited period.

3.63 Nevertheless, there are grounds for concern. They relate, again, to the conflict of approaches over the decision making process. The point is that IND officials did not regard some supporting documents as relevant to their assessment of the case, where these related to the previous employment record of the applicant. They took the view that question marks over the authenticity of previous employment documents were immaterial and that they should continue to look at whether there was other evidence that the applicant satisfied the rules and they granted applications where they concluded that there was such evidence. The more robust approach to decisions recommended in this Report would result in handling these issues differently. The fact

is that if any of the supporting documents are falsified, that rightly raises questions about the application as a whole, and those questions would need to be fully addressed first.

3.64 Beyond this, there is an undoubted need for fresh guidance on detecting forged documents.

Recommendation on forged documents

3.65 The inquiry has examined what had been provided to IND caseworkers to aid the process of identifying forged and falsified documentation. This is an area where changes occur frequently and it is important that the guidance in this area is refreshed regularly. This guidance and these instructions could either be provided as part of new guidance and instructions going to ECOs and caseworkers, covering a wider range of categories of applications, or be specific to the ECAA category.

3.66 It is also important that IND caseworkers are clear about how to refer any documents identified for further analysis and investigation.

3.67 I therefore recommend that:

Recommendation 5

Entry Clearance Officers and IND caseworkers taking ECAA decisions should have available to them fresh guidance on how to detect potentially falsified or forged documents. The guidance should cover passports and supporting evidence such as bank statements or work record books. It should also include updated instructions on when to refer any such cases for more expert advice and to whom those cases should be referred.

Establishing the new approach

3.68 If the new approach outlined in this Report is to succeed, it is important that it is established quickly and consistently in Sofia, Bucharest and Sheffield. Inevitably there will be teething problems, and it is important that these are addressed in a consistent way in all areas. This could be achieved in a number of ways, but my preferred option, and the one that I therefore recommend is that:

Recommendation 6

A Home Office led team should visit Sofia, Bucharest and Sheffield. The team should help to establish the new approach and guidance and ensure consistency of approach taken to entry clearance and to other categories of ECAA applications. The team should include a member of the Home Office Legal Adviser's Branch.

Switching

3.69 As noted in Part Two, the UK has allowed applicants who are lawfully in this country in another capacity, for example as students or visitors, to switch into the ECAA category. These are people who will have been given entry clearance in a different category, having satisfied the

ECO about their intention to return. The inquiry has found some evidence of abuse of this arrangement. There have been occasions of people coming here as part of organised tours, for a very short, specific, purpose and then applying to switch into the ECAA category almost immediately. While it may be reasonable to allow for legitimate switching, the procedures need to be tight enough to avoid abuse. If this is not achieved, the potential for abuse will remain even if steps are taken to ensure that the entry clearance system is working properly. That is because applicants would be free to avoid the entry clearance checks on their ECAA application by choosing to satisfy, instead, the different tests applied, say, to visitors. The inquiry has therefore considered how to cover this issue.

3.70 In doing so, the inquiry has examined relevant case law where the European Court of Justice has upheld the UK's right to require prior entry clearance. Where this has been tested, the end result has been that the requirement should be applied in the following fashion in the case of a passenger arriving in the country without entry clearance. In those circumstances, the court's judgment meant that the Immigration Officer should not refuse admission simply on the basis of the absence of prior entry clearance. They should, instead, apply what is called the "clear and manifest test". If a passenger "clearly and manifestly" meets the requirements relevant to the ECAA category, they should not be returned in order to demonstrate that entitlement through securing an entry clearance. Advice obtained from Counsel, in early 2002, suggested a four point test for applying the reference to "clearly and manifestly" satisfying the requirements. People without entry clearance should be considered for admission where:

- (i) from a brief perusal only
- (ii) of the documents provided, together with any other information submitted,
- (iii) it is readily apparent that there is
- (iv) an established and viable business that meets the immigration criteria.

Legal advice, provided for this inquiry, has confirmed that this is a significant test. Unless the passenger can satisfy the Immigration Officer, on a quick perusal, that they meet the requirements, they should be refused admission and returned. In this way, the purpose of the entry clearance requirement is maintained and that was the European Court of Justice's intention in the relevant Ruling.

3.71 The inquiry believes that, in order to maintain the purpose of the entry clearance requirement, this same "clear and manifest test" should be applied to applicants who are within the UK lawfully, in another category and who want to switch into this one. This would mean that IND should not automatically consider, in full, whether the applicant meets the relevant tests for the ECAA category. IND should only grant such applications if the applicant "clearly and manifestly" does so. This should be seen as a significant test and one which the majority of applicants might fail. Legal advice obtained for this inquiry has confirmed that such an approach would be consistent with the law and previous case law.

Recommendation on switching decisions

3.72 The following recommendation is designed to achieve this tightening of decisions on switching:

Recommendation 7:

In continuing to allow switching into the ECAA category from people already lawfully in the UK, the approach taken should be to mirror the "clear and manifest test" that the Courts have confirmed as the right test in the case of ECAA applicants who arrive at ports without entry clearance.

Further leave to remain and indefinite leave to remain

3.73 In applying the requirements and Rules to applications for entry clearance and to switch into the ECAA category, the focus must be on the applicants' ability to set up in business or as self employed without recourse to benefits or to taking other jobs. The relevant assessment should be informed by an understanding of what it takes to set up a viable business or in self employment. At the subsequent stages, when the applicant is seeking further leave to remain or indefinite leave to remain, the assessment will obviously be linked to the evidence that the business is operating soundly, or the self employment is going well enough to meet the test of avoiding dependency on benefits or other work.

3.74 The inquiry has looked at how IND approaches the issues at these later stages. The importance of making sure that these applications are handled well is all the greater because of the fact that some people will already be established in this country who might not have been if the tougher approach to entry clearance decisions and to switching had been in place. It would be wrong and disproportionate, in my judgement, to seek to re-open those cases. But, in order to ensure that the position of people who may have wrongly benefited from this category in the past is fully tested before they are given indefinite leave to remain here, the approach to decisions at the later stages needs to be strengthened. In addition, some of IND's resources for enforcement of the immigration control, should be allocated specifically to checking that applicants already in this country are, in practice, undertaking the business or self employment on which their stay here is based.

Recommendations on further leave to remain and indefinite leave to remain

3.75 The following two recommendations are intended to make sure that the system is robust, both for new applicants and for those already in the country but who have not yet been granted settlement:

Recommendation 8:

In reviewing how IND approaches decisions on applications for further leave and for indefinite leave to remain, training and guidance should be provided that deals specifically with how to assess financial accounts and other business documents. IND should establish links with other agencies who assess the finances of businesses and those in self employment in order to ensure that the relevant requirements are applied fully and accurately. The Department for Trade and Industry (DTI), the Inland Revenue and Customs and Excise should be contacted to see what general assistance they may be able to offer.

Recommendation 9:

IND should re-allocate some of its resources to carrying out checks now, on a risk basis, to establish whether individual ECAA applicants who have been granted leave are complying with the requirements of the Immigration Rules for the ECAA category.

PART FOUR: OTHER FINDINGS AND RECOMMENDATIONS

A. Intelligence-led operations

Fifth key finding: action taken through intelligence-led operations

4.1 The inquiry has confirmed that the ECAA category has involved a service being sold to applicants that includes pro forma business plans. An application supported by a pro forma business plan does not necessarily mean that the application should be refused. Helping applicants to present their application in good order and to best effect can be a legitimate activity. But there comes a point where this activity crosses a line and becomes an abuse of the immigration system.

4.2 The fifth key finding is that the tension between the favoured approaches remained but that some action has been taken to counter those abusing the scheme. The conflict between the approaches did not preclude action on these lines and a number of intelligence-led operations have been instigated over the period. The posting, in early December 2003, of an Immigration Liaison Officer to Bucharest, with a much wider brief, has developed understanding of the extent of the manufacturing of the applications. The work of the Immigration Liaison Officer has been instrumental in crystallising understanding of the problem, including developing the evidence that some applications have involved forged, supporting documents – bank statements and employment records. The Immigration Liaison Officer has gone on to prompt action against those representatives who have stepped beyond legitimate help for applicants.

Relevant operations and briefings

4.3 IND's Intelligence Service (INDIS) is responsible for developing operations to counter immigration abuse and people trafficking. Working with police forces, with the National Criminal Intelligence Service (NCIS) and with the National Crime Squad (NCS) – as well as with other agencies in this country and overseas – INDIS has led or helped to develop a number of operations relevant to the use of the ECAA category.

4.4 This inquiry has established that relevant operations have been run over the period going back as far as 2001. A number of operations, since that time, have investigated evidence of organised exploitation of the ECAA category, drawing upon information provided by entry clearance staff and other sources. The operations are on-going but have already included an arrest made in late February 2004.

4.5 Entry clearance staff, and, indeed, staff in IND, will have been aware – properly – of only some of the facts. Given the nature of these investigations, it was not possible to publicise the detail of them widely within IND or elsewhere. It is still not possible to do so.

4.6 This presents a problem in the current circumstances. The damage to public confidence in the system of immigration control would be reduced if it was possible to make public the relevant operational details.

Recommendation for briefing for Opposition

4.7 Some intelligence-led operations have been mounted: a very limited amount of information about the operations that are currently under way can be made available publicly without prejudicing investigations and the prospect of prosecutions. In order to avoid these risks, but, at the same time, to make available the relevant information, I now recommend as follows.

Recommendation 10:

The Home Secretary should offer the Shadow Home Secretary a briefing, on Privy Councillor terms, covering the intelligence-led operations investigating ECAA abuse. A similar confidential briefing should be offered to the Liberal Democrat spokesman for Home Affairs.

The Reflex Programme

4.8 In recent years, IND's effort to tackle immigration crime has been enhanced significantly by Reflex, the law enforcement task force set up by the Government to co-ordinate action on organised immigration crime. Reflex involves the NCS, IND, NCIS, the Foreign and Commonwealth Office and key police forces in building intelligence and co-ordinating operations against organised immigration crime in the UK and overseas.

4.9 In June 2002, on a visit to the National Crime Squad Headquarters, the Rt Hon David Blunkett, the Home Secretary, highlighted the work of Reflex and briefed on the strategy behind it. By that time, Reflex had already resulted in a number of major successes against organised crime groups. As part of the strategy, Reflex has worked closely with other countries in Europe and beyond. The June 2002 briefing explained the importance of building up intelligence on trafficking activities in key areas such as the Balkans in order to disrupt and dismantle those activities.

4.10 As part of the Reflex strategy, Project Reflex – Romania has been in place for just over two years. Under that programme, UK experts have been working with a range of Romanian authorities helping them to establish a Romanian unit tackling criminal networks which smuggle and traffic people. By the time of his visit in February 2003, Bob Ainsworth was able to report that Reflex's work with Romania had been a great success with nearly 30 traffickers already arrested. The significant efforts made by Romania in the important area of strengthening border control, visa policy and combating illegal immigration, were welcomed then; and they are to be welcomed now.

4.11 The mainspring for this work is the use of the Balkans, historically, as a route through to Western Europe. The work of Project Reflex – Romania was not brought about by the type of issue over visa control that has sparked this inquiry. For that reason, the link between Reflex and allegations of abuse of the ECAA route was not in focus – for other than the experts working more closely with it – when the recent allegations were made. But – and it is an important point – the work Reflex generated does have a bearing on tackling immigration abuse of this kind. Through Reflex, the UK has been able to work much more effectively with the Romanians across a range of immigration and documentation issues.

4.12 Project Reflex – Romania has already shown the value of the work that is under way. The concept of making an initial investment – helping to create a local capability, funded thereafter by the host Government agencies - is a sound one. Although the compass of Project Reflex – Romania obviously goes much wider than the exploitation of the ECAA category, the need for the project and its value has been illustrated clearly in the evidence collected by this inquiry.

4.13 In September 2003, similar work began with a new project involving partnership working between UK and Bulgarian authorities, again building the capacity for combating organised immigration crime. Moreover, in recent years, a network of Immigration Liaison Officers has been created working through Europe and beyond, including, from December 2003, in Romania. And,

still more recently, UKVisas and Reflex have begun to create risk assessment units, in a number of overseas posts, with a role that covers countering fraud.

4.14 This inquiry has been impressed by the excellent progress made with and by the Romanians through Reflex and the Immigration Liaison Officer appointments and by the fact that a similar project is under way in Bulgaria. The combination of the IND operations with other agencies in the UK and developments linked to Reflex, in Bulgaria and Romania, will help to establish and combat any links between the exploitation of the ECAA category and organised crime. The following recommendation is intended to ensure that the full benefits of the approach adopted in the Project Reflex – Romania are secured.

Recommendation 11:

The funding allocated to the REFLEX Romania programme should be reviewed to see if it is possible to build more rapidly on the progress already made. The plans for and the funding of the equivalent programme for Bulgaria should be examined with a view also to building up that programme.

Links to organised crime

4.15 My inquiry has been briefed on the intelligence-led ECAA operations already under way. Much progress has been made. This is increasing understanding of the nature of the exploitation of the scheme. Clearly further operations should be mounted which will add further to that understanding and will help to expose any connections with illegal gangmaster activity or other organised crime. Given the obvious risks, I therefore recommend that:

Recommendation 12:

Further investigations should continue to be undertaken by IND and other agencies to establish any links between this category and illegal gangmaster activity within the UK.

Managing intelligence priorities and reporting to Ministers

4.16 The fact that there are operations in place shows that the suggestion that the Home Office knew about the problems, but that no action had been taken, is wrong. Intelligence-led operations followed, and started to do so soon after the information emerged and well before any of the recent publicity. It is clearly essential that such operations continue.

4.17 In establishing these findings, the inquiry has looked at how IND manages intelligence it receives and how that is reported to Ministers. These issues were relevant to the inquiry for these two reasons. Firstly, because IND continued to take decisions in the ECAA category in the same way, after it had received information about the way applications were being made. And, secondly, because Ministers clearly did not have information about the relevant operations when commenting very quickly after the public disclosure of James Cameron's position, other than the arrest in late February to which the Home Secretary referred, in the House of Commons, on 30 March.

4.18 On the management of intelligence, there are three relevant considerations.

- (i) the officials handling the intelligence within IND were not able to effectively dispute the view of the law favoured by other IND colleagues, as set out in Part Three of this Report. They therefore concentrated on developing appropriate operations to counter aspects of the developing abuse;
- (ii) as noted in paragraph 4.1, there is a line to be drawn between legitimate activity pursuing applications on behalf of applicants who may well have a good case and activity that involves abuse or illegality. Defining that line is not straightforward in the immigration context, either in the abstract or sometimes even when the nature of the activity is clear. In other words, even when it is clear that applications are being orchestrated, and categories exploited, it is not self evident that there is illegality on which the authorities can act. This was a factor in this case;
- (iii) the need for an effective mechanism so that information and intelligence, held in one part of IND, is fully considered by officials responsible for the relevant policy and operational areas. This, in turn, requires more than the effective dissemination of any such information and intelligence. It requires a clear model for considering that material and deciding the actions that are needed. And this, in turn, requires a process of settling priorities and of tasking individuals accordingly. IND has developed its internal arrangements for these purposes. A new Tactical and Tasking Co-ordination Group has recently been established, and the National Intelligence Model adopted. The Group is responsible for considering risks, deciding priorities and resourcing issues, arising from an assessment of areas of immigration control that might be open to abuse.

4.19 These developments are to be welcomed because they provide greater assurance that information and intelligence available in one part of the organisation will be fully considered and assessed systematically, in terms of the action that might be needed and its prioritisation. I believe that the process of developing these arrangements should be continued, and the arrangements further reviewed, to make sure that they extend, in practice, to all parts of IND's work.

4.20 As for how intelligence-led operations are reported to Ministers, the development of IND's internal arrangements is also relevant in this way. As part of the work of the new Group, there is a new form of reporting to Ministers which covers risks and counter measures, including operations. The first submission was made to Ministers in January 2004. This provides a useful reporting mechanism complementing the reporting of individual operations as they come to a conclusion. But the fact is that the first of these reports dealt with priorities higher than those in the ECAA category and therefore did not, in practice, bring those operations to the Minister of State's attention at the time.

Recommendation on management of intelligence and its reporting to Ministers

4.21 The arrangements recently introduced in IND to improve the management of intelligence are welcomed. Their effectiveness needs to be kept under review to ensure that they are implemented and work well in all relevant IND business areas. It is of vital importance that the process also ensures that Ministers are made aware of and briefed on important operational, intelligence-led initiatives. I therefore recommend that:

Recommendation 13:

IND should further review its internal arrangements for handling intelligence and tasking. The review should ensure that, in practice, there is a structure in place, extending to all parts of IND, for fully considering and assessing the available intelligence, deciding the action that may be needed, and its prioritisation. The review should take the opportunity of considering further the reporting to Ministers of operational developments in intelligence-led operations.

4.22 IND had already identified, as a result of other issues that had attracted media interest, the need to improve its internal arrangements for identifying who, within IND, holds the relevant information in order that accurate responses are available quickly. That need has been reinforced by these events. Action is under way to meet that need.

B. Sixth key finding: asylum

4.23 The inquiry has established that the handling of ECAA applications was not motivated by the drive, on the part of IND, to halve the level of asylum applications. It was motivated, instead, by the genuinely held view of its officials that the law determined that applications should be decided in a particular way.

4.24 The target of halving asylum numbers was announced in February 2003. Some media reports have suggested that the fast tracking of ECAA cases and the associated anxiety of our post in Bucharest is to be explained as a step towards achieving that target. Presumably, the thought is that, if applicants could be diverted into the ECAA category, by making that route an easy one, fewer people would instead claim asylum.

4.25 This inquiry has found that the dispute over the approach to ECAA applications dates from at least as long ago as 2001. IND's approach, therefore, pre-dated the asylum target and, in any event, it was the interpretation of the ECAA requirements that explains events, not asylum.

4.26 The inquiry's finding means that the approach that has led to this investigation also pre-dated the change which saw ECAA cases handled by IND's General Group North in Sheffield, rather than by its Croydon based BCU. So it is distinct from the changes in guidance issued by Sheffield and covered by my earlier report. It is important to note this here in case it is suggested that the relaxation in the guidance affecting entry clearance cases, made by Sheffield staff in the period September 2003 to January 2004, somehow reflected the push to achieve the asylum target. My earlier inquiry found that the relaxation made then was motivated by the desirability of curbing backlogs. Sheffield staff, like their predecessors in Croydon, believed that the law determined that they could not take a tougher line on these applications for entry clearance anyway. So the suggestion that the approach on ECAA was motivated by the asylum target is no more true of this period than it is of the earlier period.

4.27 The report by the National Audit Office (Asylum and Migration: A review of Home Office statistics), published on 25 May, comments on whether there is a statistical relationship between the reduction in the number of asylum applications and other forms of migration. The relevant findings in that report are that there is no statistical evidence that some people who might previously have claimed asylum entered the country through other legal migration routes; and, in relation to the ECAA category specifically, there is little likelihood of a link between the increase in entrance under ECAA arrangements and the fall in the number of asylum applications in the period.

4.28 This inquiry has found the prioritisation of asylum to be relevant in one, quite different, respect. With hindsight, the developing pattern of ECAA applications looks stark and it is hard to

imagine why it was not spotted by senior managers at the time, brought to the attention of senior officials and Ministers and the underlying issues identified and resolved. Over this period, IND has been developing its strength as an organisation and its management structures. The Joint Programme Board mentioned in paragraph 4.30 is one part of that. But it has done so with asylum clearly as its priority and developed its delivery plan, with Ministers, accordingly. More recently, IND had reached the point where it can focus as much on the managed migration area as on asylum. It was getting to that point at the time of the recent controversy over the ECAA scheme. But in this period IND's senior officials were concentrating more on the asylum priority.

C. Applicants wanting to work

4.29 The exploitation of the ECAA category reflects the extent of the desire on the part of nationals of Bulgaria and Romania and of the other countries covered by the Agreements, to come to work in the United Kingdom. The inquiry has found that many applicants under the ECAA scheme have been successful who may not have been if a more robust approach had been taken toward their cases. But this is not the same as saying that the people who have come here as a result have not made a contribution in the UK. The inquiry has not tracked down all the applicants and cannot, therefore, be categorical about the precise position on this point. However, the inquiry has looked at a sample of those applicants already in the country. On the basis of that, and on the basis of looking at the nature of the applications, I believe that the majority of those people now here, under this scheme, will be working, even if not running their own business or trading as a self employed person. Many will be working in sectors of the economy where there are labour shortages or recruitment difficulties

D. Programme Management – FCO/UKVisas involvement

4.30 Over the last two years IND has put in place a formal programme management structure covering all of its main business activities. FCO/UKVisas' representatives have been invited to attend meetings of the relevant Sub-Programme Boards, including the one for Managed Migration. Membership of the overarching Joint Programme Board, chaired by the Director General of IND, is kept under regular review. Given the need for issues like this to be considered from time to time at that level, it is important that UKVisas are represented at the Joint Programme Board.

Recommendation on including UKVisas in IND's Programme Management

4.31 The fact that there was a conflict of approach between officials that was not resolved satisfactorily highlights the need for UKVisas to be closely involved in IND's programme management arrangements. The following recommendation is made accordingly:

Recommendation 14:

The structures for programme management across immigration and asylum established by IND in early 2003 should be used to raise and resolve issues of concern to overseas posts in the administration of immigration control. To achieve this, UKVisas should be represented at a senior level on the Joint Programme Board, chaired by the Director General of IND.

E. ECAA in the accession countries

4.32 Given the nature of the allegations, we have examined the process in depth as it operated for nationals from Bulgaria and Romania. We have not examined the process in detail as it operated for nationals of the countries that have acceded to the EU in the course of this inquiry. For this reason, the report does not include findings specific to accession countries. However, this should not be taken as implying that the activities that are described in this Report are necessarily confined to Bulgaria and Romania. The inquiry has received some evidence of similar activity in some of the accession states. With that in mind, the relevant recommendations in this report (Recommendations 12, for further investigations and 13, for intelligence and tasking) are not expressed as confined to Bulgaria and Romania.

F. Recommendation for handling the Association Agreement with Turkey

4.33 There is an agreement in place between the UK and Turkey which includes two main immigration provisions relating to employment and self employment. Consideration of any cases relating to these provisions is outside the Terms of Reference of my inquiry.

4.34 I am aware, however, that a number of on-entry cases were being held pending the outcome of an Home Office appeal to the Court of Appeal in the cases of Dari and Tum who have applied to enter the UK as businessmen under the ECAA standstill clause, that is to say under the Immigration Rules as they applied in 1973 rather than under the current Rules. On 25 May 2004, the Court of Appeal's judgment became available. The Home Office is considering whether to seek leave to appeal to the House of Lords in the light of that judgment

4.35 There is not a direct read across from the Bulgarian and Romanian ECA Agreements to the Turkish one. Under the Agreement with Turkey there is no direct right of establishment. The Agreement provides, instead, for applications for establishment in the UK to be considered under the Immigration Rules in force in 1973. Despite the differences, it will be important for those officials preparing to handle the outcome that they are aware of the issues highlighted by my inquiry, and I recommend accordingly.

Recommendation 15:

Plans should be prepared taking account of experience under the other ECAA agreements for handling applications from Turkish nationals when the current legal challenges are resolved.

PART FIVE: LIST OF RECOMMENDATIONS

Recommendation 1:

A more robust process for deciding applications for entry clearance should be put in place, with those decisions being taken by entry clearance staff on the basis of local inquiries, not by Home Office staff working from the UK. As part of this, interviews should be re-instated either for all applicants or where the ECO decides, on having looked at the written information, that the evidence is not clear enough to support a decision to grant or refuse EC.

Recommendation 2

An application form for the ECAA category should be introduced. The guidance attached to the application form should make it clear what supporting evidence is required. This could, in practice, avoid the need for pro forma business plans.

Recommendation 3:

Revised unified guidance should be drawn up jointly by FCO, HO and UKVisas to reflect the content of the new approach and no further entry clearance visas should be issued until the new approach and guidance is in place.

Recommendation 4

The relevant parts of the Immigration Rules should be rewritten.

Recommendation 5

Entry Clearance Officers and IND caseworkers taking ECAA decisions should have available to them fresh guidance on how to detect potentially falsified or forged documents. The guidance should cover passports and supporting evidence such as bank statements or work record books. It should also include updated instructions on when to refer any such cases for more expert advice and to whom those cases should be referred.

Recommendation 6

A Home Office led team should visit Sofia, Bucharest and Sheffield. The team should help to establish the new approach and guidance and ensure consistency of approach taken to entry clearance and to other categories of ECAA applications. The team should include a member of the Home Office Legal Adviser's Branch.

Recommendation 7:

In continuing to allow switching into the ECAA category from people already lawfully in the UK, the approach taken should be to mirror the "clear and manifest test" that the Courts have confirmed as the right test in the case of ECAA applicants who arrive at ports without entry clearance.

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In reviewing how IND approaches decisions on applications for further leave and for indefinite leave to remain, training and guidance should be provided that deals specifically with how to assess financial accounts and other business documents. IND should establish links with other agencies who assess the finances of businesses and those in self employment in order to ensure that the relevant requirements are applied fully and accurately. The Department for Trade and Industry (DTI), the Inland Revenue and Customs and Excise should be contacted to see what general assistance they may be able to offer.

Recommendation 9:

IND should re-allocate some of its resources to carrying out checks now, on a risk basis, to establish whether individual ECAA applicants who have been granted leave are complying with the requirements of the Immigration Rules for the ECAA category.

Recommendation 10:

The Home Secretary should offer the Shadow Home Secretary a briefing, on Privy Councillor terms, covering the intelligence-led operations investigating ECAA abuse. A similar confidential briefing should be offered to the Liberal Democrat spokesman for Home Affairs.

Recommendation 11:

The funding allocated to the REFLEX Romania programme should be reviewed to see if it is possible to build more rapidly on the progress already made. The plans for and the funding of the equivalent programme for Bulgaria should be examined with a view also to building up that programme.

Recommendation 12:

Further investigations should continue to be undertaken by IND and other agencies to establish any links between this category and illegal gangmaster activity within the UK.

Recommendation 13:

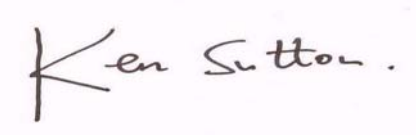
IND should further review its internal arrangements for handling intelligence and tasking. The review should ensure that, in practice, there is a structure in place, extending to all parts of IND, for fully considering and assessing the available intelligence, deciding the action that may be needed, and its prioritisation. The review should take the opportunity of considering further the reporting to Ministers of operational developments in intelligence-led operations.

Recommendation 14:

The structures for programme management across immigration and asylum established by IND in early 2003 should be used to raise and resolve issues of concern to overseas posts in the administration of immigration control. To achieve this, UKVisas should be represented at a senior level on the Joint Programme Board, chaired by the Director General of IND.

Recommendation 15:

Plans should be prepared taking account of experience under the other ECAA agreements for handling applications from Turkish nationals when the current legal challenges are resolved.

A handwritten signature in black ink on a light pink background. The signature reads "Ken Sutton." with a period at the end. The letters are cursive and slightly slanted.

Ken Sutton
17 June 2004