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Rt Hon Yvette Cooper MP
Chair, Home Affairs Select Committee
House of Commons
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Dear Yvette

I am writing to update the Committee on the review of cases under the Tier 1 (General) route, which were refused on character and conduct grounds under paragraph 322(5) of the Immigration Rules, following the Home Secretary's letter of 25 May.

My officials concluded the first stage of the review by the end of May, through which we have looked at 281 Tier 1 (General) postal applications. For the second stage, we are now looking at applications made in person, as well as Long Residence applications made by those who previously were granted Tier 1 (General) leave.

So far, the review has shown that the overwhelming majority of applications fall into a clear pattern, as follows:

- Applicants had PAYE earnings which were much lower than they needed to score points in their Tier 1 (General) applications.
- They topped these up with claimed earnings from self-employment.
- There are large differences between the self-employed earnings shown by applicants' initial HMRC records (which are typically zero or very low) and those claimed in the Tier 1 applications for the same periods.
- Where the claimed earnings fell across two tax years, caseworkers have checked against the records for both tax years.
- Applicants have made amendments so that their HMRC records match what they claimed in their Tier 1 applications.
- In 249 of the initial 281 cases reviewed, applicants amended their HMRC records by more than £10,000. In many of the remaining cases, though the differences were less than £10,000, they were nevertheless substantial.

- In 241 cases, the amendments were made more than three years after the initial submission to HMRC, with the majority looking to amend their records within one year of making a further application to the Home Office.
- Such amendments appear to have been made only for the years for which points were claimed in previous Tier 1 applications, not for the intervening years.
- Applicants were given the chance to explain their situation. Most of those who did provided no further explanation other than that there were errors by their accountants.
- Applications were not refused on the grounds that the applicants made errors in their tax returns. They were refused on the grounds that applicants had, most likely, exaggerated their earnings to the Home Office to claim enough points to obtain leave to remain or indefinite leave to remain in the UK or, alternatively, substantially under-reported their earnings to HMRC to evade tax. In either scenario, their character and conduct is such that their applications should not be granted.

Many of the individual cases which have been raised by Members of Parliament fall into this pattern, as well as those which have received less Parliamentary attention. I am confident that the overall handling of these cases, including the application of paragraph 322(5), has been correct.

However, as I said to the Committee on 8 May, it is important that any applicants who may have made minor errors have not been inadvertently caught up in tackling this wider pattern of abuse. We are carefully reviewing any cases where the evidence is less clear-cut, to be sure that the refusal decisions were correct. We will provide more information on these cases in our final report.

We have only identified one individual in this cohort who has had an enforced removal from the UK. That removal was due to a criminal conviction. We have identified a further 65 individuals who have left the UK voluntarily. We have reviewed all of these cases and are satisfied that the decisions to refuse were correct.

I expect the remaining cases to be reviewed within the next few weeks and I will report the full findings of the review to the Committee as soon as possible thereafter.

I would also like to reassure the Committee that outstanding decisions are on hold while we complete the review. Although there have been media reports that we are still making refusals, these have in fact been legal challenges to refusal decisions which have already been made, in some cases 2-3 years ago. It is the applicants, rather than the Home Office, who are pursuing these cases through the courts. It is right that they have avenues to legally challenge our decisions, and it would not be right to try to delay their hearings because of the review. We are continuing to defend only those legal challenges where we are satisfied the decision to refuse was correct.

In addition to the 281 postal applications we have looked at, we carried out a separate data exercise to look at judicial reviews and appeals across the wider group of all Tier 1 (General) migrants refused under paragraph 322(5). This work is ongoing. The Committee will be aware that, during the Westminster Hall debate on 13 June, I reported on the findings made available to me at that point. We had then identified 204 judicial review challenges and 223 appeals relating to these cases. We agreed to reconsider a minority of cases as part of the ordinary litigation process – these reconsiderations were not prompted by the wider review. Approximately 25 of these judicial reviews and 150 of these appeals are still outstanding.

Of the cases identified at that time which had gone to a full substantive hearing, no applicants had been successful. We have since identified a small number of Judicial Reviews where applicants have been successful at substantive hearing, however it remains the case that judges have agreed our decisions were reasonable in the majority of hearings. We have also identified 38 refusals that were allowed on appeal. Although the earnings issues were considered on appeal, the majority were overturned solely on human rights grounds rather than because of decision-making errors relating to earnings. These litigation figures are subject to change while the review is ongoing. We will provide further information in relation to legal challenges in our final report.

I would also like to take this opportunity to address two further concerns that have been raised regarding this group of applicants:

Firstly, concerns have been raised regarding individuals' right to work, to rent, and to access the NHS. Essentially their position is the same as that of other applicants in the immigration system – those who have temporary leave, by definition, have only ever had a time-limited right to work, etc. Where we have refused an application, we have not taken away any existing rights; the individual has simply been unsuccessful in applying to extend those rights for a longer period.

For those cases which are on hold, as long as the individual applied before their existing leave to remain expired, their immigration status and all associated rights are protected for as long as their application is on hold and, if refused, for as long as the individual is exercising their rights to an administrative review or an appeal. This means they can continue to work, rent and access NHS services during this time.

Secondly, concerns have been raised that we are branding applicants refused under paragraph 322(5) as risks to national security, meaning they will be unable to obtain visas anywhere in the world. This is simply untrue. Paragraph 322(5), which is a long-standing paragraph dating back to at least the earliest version of the current Immigration Rules in May 1994 (and, in substance, previously as section 3(5)(b) of the Immigration Act 1971), covers a wide range of reasons. Our published guidance makes clear that an applicant does not need to have been convicted of a criminal offence for it to apply, and our decision letters confirm that applicants are being refused on character and conduct grounds, not security concerns.

In relation to the concern that people refused under this rule may be barred from travelling to other countries, while the Home Office will consider an applicant's past UK immigration history, the paragraph carries no automatic ban on applying to re-enter the UK in future. Accordingly, nothing is recorded in an individual's passport to state that they have been refused under paragraph 322(5) or which would otherwise draw any other country's attention to the person's history

I hope that this letter provides some assurances about the Home Office's handling of these cases. I look forward to presenting our full findings within the next few weeks.

I am copying this letter to Alison Thewliss MP and also placing a copy in the House Library.

Yours ever

Caroline

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Minister of State for Immigration