

E.R

Thursday, 17 June 2004

HOME OFFICE

Handling of European Community Association Agreements (ECCA) applications

The Secretary of State for the Home Department (Mr. David Blunkett): On 30 March, I asked Ken Sutton, Senior Director (Asylum) in the Immigration and Nationality Directorate (IND), to investigate allegations about how applications under the European Communities Association Agreements (ECAA) from citizens of Romania and Bulgaria to come to the United Kingdom to establish businesses or set up in self-employment had been dealt with. The central allegation was of a massive, well-organised scam in relation to these applications and that whilst this had been drawn to the attention of the Home Office nothing had been done to address the problem.

These were serious allegations and to get to the facts quickly in order to set matters right, I asked Mr Sutton to investigate them. I am grateful to him for the thoroughness of his work. Mr Sutton makes 15 recommendations all of which I accept and which I am today publishing with his report in full.

The ECAs, which were signed from 1994 onwards, give rights of establishment in EU member states to those from accession countries seeking to set up in business or self-employment. Such people are to be treated no less favourably than nationals of the host state. The thinking behind the Agreements is that, in advance of accession, citizens of countries joining the European Union should have some of the advantages of membership. People who establish themselves here in business or in self-employment bring real benefits to our economy and to their own countries as they prepare for membership of the EU.

Responsibility for granting entry into the UK under the scheme came to be shared between staff in IND – first in Croydon and later in Sheffield – and staff in posts overseas. The issue at the centre of these allegations is that IND staff granted applications under the ECAA on the basis of pro forma business plans and forged documentation and ignored repeated attempts by Entry Clearance Staff in post in Bucharest and Sofia to challenge this practice. It was also alleged that the underlying reason for this practice was to reduce the number of asylum applications in the UK.

Mr Sutton confirms that there is clear evidence that the ECAA category has been exploited and that applications were granted to some individuals who were unlikely to have been able to demonstrate that they could sustain themselves in business. However, because of the staged nature of the process, final, indefinite leave to remain in the UK had only been granted to around 150 applicants in the last two years by the time of the suspension of the scheme in March. Others who came to the UK in this way have not yet reached that status and the actions Mr Sutton recommends and which I have instructed IND to put in place, mean that only those who meet the full requirements of the scheme will be allowed to stay permanently in this country. He also suggests that the real purpose of those coming to the UK in this way was likely to be simply to seek employment rather than to exploit the welfare state for provision of benefits to which they were not entitled.

In turning to how this situation has arisen, Mr Sutton's report concludes that the central allegation that the Home Office were made aware of a scam and took no steps to address it is wrong. But it does paint a picture of an insufficiently robust approach to the way in which this scheme functioned operationally and a failure of related management systems. The report finds that there was a sharp difference of view between, on the one hand, staff responsible for policy and casework on ECAA applications in IND who thought there was little room in law for manoeuvre in refusing applications and, on the other, staff in Bucharest and Sofia responsible for considering entry clearance applications in such cases – who favoured a much tougher approach. Mr Sutton concludes that neither approach was entirely right but that a more robust approach could and should be adopted.

The reason for this problem stems back to 1996, when the practice followed in dealing with applications made at ports of entry under the ECAs was challenged in the courts. In the judgements of the European Court of Justice which followed in September 2001 the Court emphasised that Member States were prohibited from discriminating against these nationals setting up in business or self-employment. Staff in IND took from this, from the terms of the Agreements themselves, and from the fact that there are few restrictions on British citizens establishing business or setting up as self-employed people, that there were only limited grounds for refusing applicants under the ECAA especially in low skilled routes. The view in IND was so entrenched that the warnings from entry clearance staff and the increase in numbers in the scheme did not lead to a reconsideration of the correct interpretation of our obligations under the ECAA. As a result, no analysis of alternative approaches was considered by senior managers or put to Ministers including when the Rt Hon Member for Stretford and Urmston requested advice following receipt of a letter last year from the Rt Hon Member for Coventry North East. The fact that an aspect of the Government's approach to ECAA cases had previously been challenged on applicants' behalf in the European Court of Justice highlights the difficulties of striking the right balance in this area.

On the other hand, entry clearance staff in Bucharest and Sofia, faced with a significant increase in the number of applications and the growth of advisers whose services included the provision of standard format business plans, favoured a different approach under which most cases would have been refused. This difference of view was the subject of exchanges between staff in the posts and the Home Office over a period, but the Home Office view prevailed because this was believed to be a necessary consequence of the terms of the agreements and the relevant ECJ judgements.

Whilst the requirements for a successful application are not high, particularly in a low-skilled trade, legal advice which Mr Sutton has taken in the course of his investigation would support a more challenging approach to decision-making in these cases than the Home Office has taken in the past. Under this approach, factors such as those identified by the posts as grounds for refusal could be taken into account in deciding, in the round, whether the application is credible, although none of these factors on its own would support a legally sustainable refusal without looking at the overall strength of the application.

Mr Sutton has recommended that in future decisions on applications for entry clearance in this category should be taken at the post by entry clearance officers and that new guidance should be drawn up reflecting the legal advice he has taken. I have accepted these recommendations, and a team comprising Home Office, UKvisas and

FCO staff will shortly visit Bucharest and Sofia to establish the new approach. Once this guidance is in place, I intend, with my Rt Hon Friend the Foreign Secretary, to restore the service to those seeking entry clearance under the ECAAs at the posts at Bucharest and Sofia. Genuine applicants under the Agreements who establish themselves here in business or as self-employed people will continue to be welcome in this country, and will not be discouraged.

In addition, I have reinforced with managers my existing directive that all significant legal judgements should be drawn to my attention with a view to considering both their implications and the potential for further challenge.

Allegations were also made about the use of fraudulent documents in applications. Mr Sutton's investigation has found that IND did take an appropriately serious view of cases where there were grounds for suspecting that passports or other travel documents were forged. The Report also finds that confirmation of the fact that some bank statements were forged emerged only following the posting of an Immigration Liaison Officer to Bucharest in December last year and that action was taken on this between then and the allegations made in March. This is important given the charge that IND staff were agreeing applications which they knew to be supported by forged documentation. However, there are still grounds for concern in relation to employment records which were not adequately dealt with because they were not believed to be sufficient grounds for refusal of an application. He therefore recommends that the new guidance should make it clear that the authenticity of all supporting documents is relevant to the decision in the round on the credibility of the application.

I have already indicated that only 150 applicants were able to proceed to indefinite leave to remain in the UK as a result of the scheme. However, the number of individuals gaining initial entry into the UK using this route or switching into it from other categories was substantial. Mr Sutton identifies a total of ECAA applications from Romanian and Bulgarian citizens over the relevant period as being just under 7,400 in 2002-2003 and nearly 16,600 in 2003-2004. 25 per cent of applications to switch into the category from people already in the UK were from Romanian and Bulgarian nationals. I have already announced a series of measures to tighten the arrangements for those coming to work in the UK which the recommendations in this report will strengthen still further.

Many of these will be applications which would have been granted in any case, but it is likely that some involved people who intended to work without necessarily setting up in business or being self-employed. Mr Sutton's report also indicates that it is likely that most of those successful under the scheme worked and in consequence did not come to make demands on the benefits system. Nonetheless, we will now ensure that other than those few who have been granted ILR, all of those already in the UK under the ECAA for a limited period are fully tested before they are given indefinite leave to remain or are permitted further extensions short of that. We shall therefore strengthen our approach to decisions not only at entry clearance stage, but also at later stages, and will be looking to test rigorously whether businesses on which earlier successful applications were based have in fact been established and are viable. I have therefore also accepted Mr Sutton's recommendation that the relevant Immigration Rules should be rewritten, and in particular that where the applicant is already in this country and is seeking to switch into the ECAA category, the test should be significantly tightened. The approach should mirror the case of ECAA applicants who arrive at ports

without entry clearance. IND should only grant such applications if the applicant “clearly and manifestly” meets the relevant test for the ECAA category. This should be seen as a significant test and one which the majority of applicants might fail. This will include the allocation of enforcement staff to carry out checks on those already in the system and, if appropriate, to remove them from the UK.

The rewritten Immigration Rules will also include clearer requirements ensuring that applicants have sufficient funds to be able to support themselves financially while in the UK without having to resort to another job or seeking state benefits.

However, whilst operational practice in relation to these applications was clearly inadequate, the report finds that action was taken to respond to the exploitation of the ECAA route in Romania and Bulgaria in particular in relation to links to organised crime. Mr Sutton’s report finds that, over two years ago, intelligence-led operations and, in particular under Reflex Romania, were mounted against organised immigration crime which had an impact on investigating organised exploitation of the ECAA category. Under this programme resources have been provided to develop a central intelligence unit in Romania with seconded staff as well as specialist training and equipment. Overall – covering immigration crime as a whole - this unit has already disrupted 40 operations and arrested nearly 100 people since it started about 18 months ago.

These operations continue, and have already led to arrests. Since details cannot be published, Mr Sutton has recommended that opposition spokesmen be offered a confidential briefing on the operations which I have now made available. He has also recommended that we should build on the equivalent programme in Bulgaria on which work began three months ago.

Mr Sutton has also reported on the posting last year of an Immigration Liaison Officer (ILO) to Bucharest whose work has been instrumental in crystallising understanding of the recent problems, and who has gone on to prompt action against those representatives whose activities have stepped beyond legitimate help for applicants. I welcome this positive development. This was followed up by visits from senior officials in March this year.

I also touched on these operations in my own speech to the House on 30th March when I referred to the visit by officials earlier that month. This visit was for discussions with the Romanians on combating illegal immigration, including the Reflex work. Abuse of the ECAA route came up at briefing meetings my senior official had with Embassy staff. The report I received from him on 4 March on his visit referred to concerns that the ECAA scheme was vulnerable to abuse, that a solicitor had been arrested on suspicion of facilitation in connection with this, and that he was following this up. In the course of his inquiry, Mr Sutton has now found that in fact James Cameron had a more detailed informal conversation, not with my senior official, but with other members of his team, which were not reported to me at the time or to my Rt Hon Friend the then Minister of State.

Mr Sutton also examined the allegation that the IND approach was motivated by a desire to reduce numbers of those claiming asylum from the two countries in order to meet the Prime Minister’s target to halve the number of asylum applications. He concludes that the Home Office approach was motivated by a genuinely held view that the law required cases to be decided in a particular way, and not, as has been alleged, by

the drive to reduce the level of asylum applications. In reality the number of asylum applications from citizens of all East European countries fell during the relevant period which was as a result of our introduction of non-suspensive appeals in clearly unfounded cases. The decrease in applications continued following the introduction of non-suspensive appeals in November 2002 and March 2003. This is consistent with the findings of the recent review of asylum statistics by the National Audit Office [HC 625 Session 2003-04] which concluded that "there is no clear statistical evidence that the reduction in the number of asylum applications has had any significant impact on other forms of migration". The supporting analysis for the NAO report, undertaken by a team from University College, London concluded that: "There is little likelihood of a link between the increase in entrants under the ECAA arrangements and the fall in the number of asylum applicants over the period".

To sum up, Mr Sutton's report describes a significant, and until now unresolved, failure in handling ECAA applications over the last two years. As a result, around 150 applicants under the ECAA scheme – some of whom may not have been successful under the process I am putting in place – have been granted indefinite leave to remain. But it does not find that allegations about wholesale exploitation of a process by organised criminals were ignored – on the contrary arrests had already taken place when the allegations were made – nor that applications were simply waved through in order to meet an asylum target. This has not led to the wholesale undermining of our balanced immigration and asylum policy. Those who came here to work have done so and contributed to our economy.

Nonetheless this report exposes failings which I am determined – with senior management – to set right. Over the last 2 years, my Rt Hon Friend the member for Stretford and Urmston oversaw a major programme of change including establishing a programme board structure and the restructuring of management systems and management information. Closer links have been established between operations and policy and with UKvisas and posts abroad. UKvisas are now, for example, represented at senior level on the Joint Programme Board of officials which oversees the Home Office/Department of Constitutional Affairs Immigration and Asylum Delivery Plan. These changes have already shown results in relation to asylum. Building on that success and the more recent establishment of task-forces on students, marriage, migration for work (including under the ECAAs) and the Commonwealth working holidaymaker scheme which brings together policy, operational and intelligence personnel, IND now has a stronger capacity to identify significant trends in applications, spot emerging problems and mobilise policy and operational resources to address them, as should have happened in this case and which is a pre-requisite to ensure that Ministers and senior managers are abreast of all important developments.

In addition, IND has developed its internal arrangements for management of intelligence. A new Tactical and Tasking Coordination Group has recently been established and the National Intelligence Model has been 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. There is also a new form of reporting to Ministers which covers risks and counter measures including operations. These mechanisms mean that in future, the organisation will be more effective in spotting trends and tackling problems.

Mr Sutton's report makes a number of other recommendations, all of which I have accepted. Ministers and senior management alike are determined to ensure that very real improvements are made as a result of the report we are publishing today.