

## **Annex**

### **Re-consideration of the decision to refuse an application for British citizenship**

The ways in which British citizenship can be acquired are defined in the British Nationality Act 1981 and the regulations made under it; these can be viewed at [www.statutelaw.gov.uk](http://www.statutelaw.gov.uk).

How we consider and decide an application for British citizenship can be viewed on our website at <http://www.ukba.homeoffice.gov.uk>- go to Policy and law > Guidance and instructions > Nationality Instructions. Where individual circumstances are not precisely covered by our instructions and there may be scope for exercising discretion beyond this, we will consider an application on its merits and with reference to agreed precedents or, in especially compelling cases, by creating a fresh precedent where this can be justified. An application which is not covered by our instructions, is not matched by agreed precedents and does not justify the creation of a new precedent, must be refused.

As you do not meet one of the requirements for citizenship, we have considered the exercise of discretion to overlook this, both in line with our instructions and agreed precedents and by considering the individual circumstances of your case with a view to creating a fresh precedent, but could not find sufficient reason to do so. Your application has therefore been refused.

There is no right of appeal against our decision to refuse your application but if you believe it is incorrect, you can apply for it to be reconsidered by completing the enclosed Form NR. A fee of £80.00 is payable for reconsideration and should accompany your application.

If our decision is reversed and your application is approved, the fee will be used to cover the cost of your citizenship ceremony, where applicable, or refunded. If our decision is maintained, the fee will be retained to cover the costs of reviewing your application.



FORM NR

## **RECONSIDERATION OF DECISIONS TO REFUSE CITIZENSHIP**

1. INTRODUCTION

2. HOW DECISIONS ON CITIZENSHIP APPLICATIONS ARE REACHED

3. ASSESSMENT OF ELIGIBILITY

4. FEE

5. REQUEST TO RECONSIDER A DECISION TO REFUSE

6. DECLARATION

## 1. INTRODUCTION

Applying for British citizenship is a significant step towards integration and a future life in the UK. British nationality law sets out the requirements for becoming British. These are agreed by the British Parliament and are intended to ensure that those who wish to apply for British citizenship have established appropriate connections with the UK. The law is contained mainly in the British Nationality Act 1981.

The full text of the legislation can be viewed at [www.statutelaw.gov.uk](http://www.statutelaw.gov.uk).

Most refusals of citizenship could be avoided if applicants had ensured, before applying, that they understood and satisfied the legal requirements. In a very few cases, refusal might be due to official error. The letter which gave you the decision on your application should explain the reason why it was refused.

Whilst there is no legal right of appeal or review of nationality decisions, you may ask for it to be reconsidered if you disagree with the reason for refusal. There is a small charge for reconsideration which will be returned (less the citizenship ceremony fee where appropriate) if the decision is reversed and your application is approved.

## 2. HOW DECISIONS ARE REACHED

Applications for British citizenship come in two types. The first are *entitlements* to register as a British citizen. These include all applications from adults who already hold some sort of British Nationality to upgrade to British citizenship. It also includes applications from minor children (under age 18) who have British parents or were born in the UK and are eligible to apply for British citizenship.

The second group are those applicants who are applying for *discretion* to naturalise or those children who do not have an *entitlement* to apply but have established enough connections with the UK to comply with the Home Secretary's policy on the exercise of discretion to grant citizenship to minors.

We carry out enquiries in all cases to ensure that the requirements are met. Where the character requirement applies, we make checks with relevant government agencies with whom we share information about applicants.

There is no discretion with regard to the good character requirement. In other words the Home Secretary cannot grant citizenship unless he is satisfied that the applicant is of good character for the purpose of nationality law. Her policy on the application of the good character requirement is contained in the nationality staff instructions. Whilst the policy is not an inflexible rule, the Home Secretary would not normally grant citizenship (where there is a good character requirement) where the applicant has an unspent conviction. We may disregard certain minor offences. In assessing the seriousness of criminal convictions we are bound by the decision of the court. Any mitigation will already have been considered by the court as part of sentencing.

Fines have a spent period of five years. Except where we disregard isolated minor offences as described in the guidance notes for applications, you should allow five years to elapse following convictions resulting in fines before applying under any provision for which there is a good character requirement.

### **Entitlement to register**

Applications are checked to ensure that the applicants' circumstances match the requirements for registration. Since there is no discretion to disregard the requirements, applications are refused if the requirements are not satisfied.

We also carry out checks to ensure that the supporting evidence has not been forged or fraudulently obtained. Where false documents have been produced the application will be refused and we will refer the matter for possible prosecution. If documents

cannot be verified or the applicant cannot prove their entitlement then the application will be refused. There must be no doubt that a proper legal entitlement exists.

Where the entitlement depends on the applicant holding no other nationality (he is not a dual citizen), there must be convincing evidence that another nationality is not held. Guidance on this may be found on the UKBA website.

Applications at the Home Secretary's discretion to naturalise adults or register minors

We make decisions on applications once enquiries have been completed. Enquiries are carried out in all cases to ensure that the statutory requirements have been met. The extent of these and the time taken to complete them varies from one application to another depending on applicants' circumstances.

Once enquiries and checks have been completed, applications are considered according to the following questions.

1. Are the statutory requirements set out in the British Nationality Act 1981 met?  
If not
2. Is there discretion not to apply the requirement or to vary the extent to which it is applied? If so
3. Are the additional criteria set out in the Home Secretary's policy on the exercise of discretion met? If not
4. Has the Home Secretary previously granted citizenship to someone outside of his policy in the same circumstances? If not
5. Are the circumstances sufficiently compelling and different from others that have been refused to justify consideration to grant and create a further precedent?

The following consideration will be applied in answer to those questions.

1. The statutory requirements are set out in the guides that accompany application forms. These are legal requirements. They cannot be ignored by caseworkers making decisions on behalf of the Home Secretary.
2. Discretion is limited to certain requirements. The rest must be satisfied in full. We call these unwaivable requirements. Again, this is fixed in law. If requirements have not been met AND discretion cannot be exercised then the application must be refused and the decision cannot be reversed.
3. Where discretion exists, it must be applied in a consistent and rational manner. Due to the large number of applications being received, which are handled by a large team of caseworkers, the Home Secretary has agreed a policy on the exercise of his discretion that covers most eventualities. Just because discretion *may* be allowed does not mean that it *has* to be exercised and many applications are refused because they do not meet the additional criteria for the exercise of discretion.

The number of cases that have been granted exceptionally is limited, and a worthy case might not match those exceptional cases that have already been considered and granted. Additional consideration may be given in case it is sufficiently exceptional as to grant and create an additional precedent. Care must be taken to ensure that granting citizenship in such exceptional cases does not empty the requirements of meaning. If the applicant's circumstances are not sufficiently compelling then the application must be refused.

The onus is on the applicant to demonstrate that they *do* satisfy the requirements or additional criteria, or merit exceptional consideration. It is not for the Home Secretary to prove that they *do not* meet the requirements. If she cannot be satisfied that the requirements are met then she is bound by law to refuse the application. Applications

are not kept under constant review and a fresh application and fee must be submitted if an unsuccessful applicant wishes to become British.

We may reopen applications where:-

- we have not used the correct requirements or criteria to decide the application
- we refused your application for lack of a response to enquiries when a response had been received but not linked with the application
- we decided your application without allowing sufficient time for a response or completion of enquiries
- we refused your application for failing to respond to enquiries or failing to arrange a citizenship ceremony, but we are satisfied either that you were genuinely unaware of the enquiries or ceremony notification (for example, you had not seen or received an information/documents request letter or ceremony invitation letter due to an absence or illness or some failure on the part of the person representing you) or that, although you were aware of the enquiries/notification, the lack of response was due to some failure on the part of the person representing you
- we refused your application on character grounds due to a criminal conviction which was either later quashed on appeal or involved a case of mistaken identity (i.e. you were not the person convicted of the offence)
- we have failed to take account of relevant documents or information in our possession

This is not an exhaustive list.

We will not reconsider on grounds of

- long residence, where the statutory requirements are not met
- convenience of holding a British passport for business or other reasons, but the requirements were not met.
- cultural reasons or reasons connected with ancestry
- past service in the armed forces

### **3. ASSESSMENT OF ELIGIBILITY**

Before deciding whether to make a formal request for your application to be reconsidered you should assess whether you satisfied the requirements by reference to the guidance on your application type. Remember that the Home Secretary will also take into account how requirements are met. For example, where an application has been lodged abroad in order to avoid the requirement to be free from UK immigration conditions on the date of application or is supported by evidence of attendance on an ESOL course which is considered to have been of dubious merit, the Home Secretary will invoke her discretion to refuse naturalisation and is unlikely to be prepared to reconsider her decision.

Nationality law is complex. The UK Border Agency website and leaflets and guides attempt to explain the requirements for citizenship in simple terms. If your circumstances are unusual i.e. outside the range of the law and Home Secretary's policy on the exercise of discretion, it is recommended that you seek professional guidance from solicitors specialising in immigration and nationality law or an immigration and nationality agent registered with the Office or the Immigration Services Commissioner. Details of a solicitor or agent near you may be obtained from the internet.

The Nationality Instructions are at

[www.ukba.homeoffice.gov.uk/policyandlaw/guidance/nationalityinstructions/](http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/nationalityinstructions/)

#### **4. FEES**

**The fee payable for reconsideration of an application can be found at:**

<http://www.ukba.homeoffice.gov.uk/britishcitizenship/applying/cost/>

PLEASE DO NOT RETURN YOUR CITIZENSHIP CEREMONY REFUND CHEQUE  
(if applicable). YOU SHOULD CASH THIS.

**5. REQUEST TO RECONSIDER A DECISION TO REFUSE.**

Forename(s).....

Surname.....

Date of birth.....

Home Office Reference.....

Address including post code

.....  
.....  
.....

Day time telephone number .....

If represented by a solicitor or agent, their name and address.

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You have been given the grounds for refusing your application. Please say below why you disagree with that decision.

- Was the decision was reached in the absence of documentation that had been requested and you believe that this had been provided by the due date? If so, please provide evidence of when it was sent.
- Do you believe that the decision was reached prematurely, before you were able to supply all relevant documentation? Say what steps you had taken to contact us to ensure that you were allowed sufficient time.
- Were you refused for being in breach of immigration laws but believe that you were not in breach? If so please provide confirmation of when you were granted permanent leave to remain (ILR or ILE) and your immigration status in the 4 years (3 years if you are the spouse or civil partner of a British citizen) preceding the grant of leave.
- Do you believe that the decision was reached on irrelevant statutory requirements or policy criteria? If so, say which requirements or policy criteria should have been applied. Do this with reference to the guide that accompanied the application form or the policy and law section of the UK Border Agency website, including the precedent based scenarios.

Please be as concise as possible, but you may attach an additional sheet if required.





**6. DECLARATION:**

Warning: Making a false declaration in order to gain British citizenship is a criminal offence punishable with up to three months imprisonment or up to a £5000 fine, or both, under section 46(1) British Nationality Act 1981.

I (full name in BLOCK LETTERS).....

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- Declare that to the best of my knowledge and belief the information given in this form is correct.
- I understand that I shall be liable for prosecution if I have knowingly or recklessly provided wrong or incomplete information.
- I confirm that I have enclosed the appropriate fee (see nationality fees leaflet).
- I confirm that I have enclosed the appropriate documents.

Signature.....Date.....

PLEASE NOTE: If you require your valuable documents to be returned by secure post you should enclose a pre-paid self-addressed Royal Mail Special Delivery (or Recorded Signed For delivery) envelope with your application. The pre-paid self-addressed envelope should be sufficient to accommodate the size and weight of your documents and be insured to the appropriate level for the value of your documents. If this is not enclosed your documents will be returned to you using Royal Mail 2<sup>nd</sup> class post.