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NOTE: MANDATORY SYSTEMS CHECKS

For section 4.2.2, “requesting sight of the Visa Application Form (VAF) from the Issuing embassy/consulate”, read:

CRS

If you have access to the Central Reference System (CRS) for visa applications made abroad, the person search is completed in a similar manner to that for CID. View the CRS guide.

RAPid- IAFS

If you have access to a RAPid machine, you can complete a mobile fingerprint check against the Immigration and Asylum Fingerprint System (IAFS). This will tell you if the individual has previously been fingerprinted by UKBA. View guidance on RAPid checks

4 No Evidence of Lawful Entry (NELE)

If, when an individual is encountered, they are unable to produce a passport and there is no trace of them within the Home Office Records, this may indicate that they are an illegal entrant. However the absence of a passport or a trace is not in itself sufficient grounds for treating them as an illegal entrant, and Immigration Officers should bear in mind that individuals who have entered the country via the common travel area will have no evidence of entry in their passports.

Where an individual can neither provide evidence nor a satisfactory credible

explanation to support his/her claim of lawful entry, the Immigration Officer/caseworker can be satisfied to the required degree of probability that the individual is an illegal entrant and it may be possible for illegal entry action to be taken.

An interview under caution **must** be carried out, with the exception of caseworkers 'assuming' 'illegal entry without interview under the guidance listed in 4.2 (Summary of policy for caseworkers).

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4.1 Procedures when dealing with a NELE

If, during the interview under caution, the individual admits illegal entry, either by deception or entering without leave, obtain full details and serve notice of illegal entry (IS151a). Without an admission, the burden of proving illegal entry to the required standard rests with the Immigration Officer (IO).

Where a person can make a prima facie case that they did obtain leave to enter (and a statement amounting to no more than he saw an IO and his passport was stamped might be sufficient) then the IO must prove to a high degree of probability that deception was employed before illegal entry action can be considered.

It may be possible to show, following a full interview and carrying out as many checks as possible at the time, that there is sufficient weight of negative evidence to infer that the person last entered without leave or by deception. Where deception is being considered, the standard of proof needed is high, and will require clear evidence that the individual has tried to deceive UKBA.

If the individual claims to have been given leave to enter the United Kingdom by virtue of a notice given orally under article 8(3) or to a responsible third party (i.e. a coach party leader) under article 9 of the Immigration (Leave to

Enter or Remain) Order, the onus is upon the individual to show the manner and date of entry into the United Kingdom (e.g. a coach ticket or other evidence to show the date and means of entry). If they cannot do so, the Immigration Officer should consider the individual merits of the case; which may show that it has been proven, to the required high degree of probability that the person is an illegal entrant. Service of illegal entry papers on NELEs must be authorised by a grade not below Chief Immigration Officer (CIO) but see also: Detention of NELE's (4.3)

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4.2 Summary of policy for Caseworkers

Part 5 of the Nationality, Immigration and Asylum Act 2002 enables us to bring into effect changes in the way that we handle cases in which the applicant's lawful entry is uncertain or unknown.

Caseworkers are able to 'assume' illegal entry and serve illegal entry notices without an interview under caution (including by fax and post) **only** where there is clear evidence that an Individual has entered illegally and the facts of the case are not in dispute.

Service of illegal entry notice without an interview under caution is **not** appropriate in the following cases:

- where illegal entry by verbal deception is suspected; or
- where it is intended to prosecute the individual;

The onus remains on the caseworker to prove that the method of entry described by the claimant is false and to ensure that they have completed all possible checks to rule out lawful entry before concluding the person has entered illegally.

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4.2.1. Initial checks to determine whether the individual entered the United Kingdom legally

Caseworkers must check the following on every case where the individual's method of entry is uncertain or unknown for information on how the individual entered the UK:

- Application form
- Screening notes, including any port records
- Any Interview Records
- Other documentation on file – i.e. passports, visas

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4.2.2. Visa Application Form (VAF) checks

If an individual states that they have been granted a visa to enter the UK, the caseworker must satisfy himself/herself that this claim is false before concluding that the applicant entered illegally.

This can be done by requesting sight of the Visa Application Form (VAF) from the issuing embassy/consulate.

Caseworkers should ensure that the case file is minuted to show what checks have been completed, and the outcome of those checks.

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4.2.3. Method of entry questionnaire (MOEQ)

If the caseworker is unable to determine the applicant's immigration status, the individual should be sent a Method of Entry Questionnaire (MOEQ) (ASL.1944),

accompanying notes (ASL.1945) and a covering letter (ASL.1943) to complete detailing his/her entry into the UK.. Allow the applicant 28 days from receipt to complete the questionnaire.

On return of the questionnaire: If the applicant provides sufficient information for the caseworker to determine their immigration status, the case will be decided in accordance with their immigration status. If they state that they entered illegally (and have not regularised their status) they may be treated accordingly.

If the applicant does not provide sufficient information regarding their immigration history or does not return the questionnaire in the required time it will be assumed that they have entered the United Kingdom illegally; See 4.2.4.

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4.2.4 Cases where method of entry has been thoroughly investigated, but still unable to determine applicant's immigration status.

The caseworker must be able to demonstrate that they have fully investigated the individual's method of entry into the United Kingdom and that all other checks have been carried out as detailed in 4.2.1 – 4.2.3 above.

- The caseworker should minute the case file, including details of all investigations made, to confirm that every effort has been made to establish the individual's immigration status.
- The caseworker should review all the available evidence, including any non-co-operation by the individual, and on balance may conclude that the applicant is an illegal entrant.
- Confirmation should be sought from a senior caseworker that every effort has been made to establish the individual's immigration status. If the senior caseworker is satisfied that the applicant's method of entry has been fully investigated, the senior caseworker should minute the file to

confirm this, clearly stating their name and grade. The minute should say: *“Method of entry was thoroughly investigated, but it is still not possible to determine the individual’s immigration status. The individual is, therefore, assumed to have entered the United Kingdom illegally”.*

Following agreement by the senior caseworker, the caseworker should continue with the procedure by treating the individual as an illegal entrant.

- If the senior caseworker determines that the method of entry was not thoroughly investigated by the interviewing officer, they should minute the file to state this and direct the caseworker to carry out the necessary remaining investigations.

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4.3 Detention of NELEs

Where an individual does not admit illegal entry, his detention as a NELE must be approved by a grade not below that of HM Inspector (HMI) **from the outset** and the file must remain under constant review to ensure that all avenues of enquiry are pursued. In cases of doubt, the HMI must refer to the Deputy Director or in his/her absence an operational Assistant Director.

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4.4 Removal of NELEs

Any individual who had previously been treated as an illegal entrant on the basis of non-compliance, or who had been served illegal entry papers *without* an interview under caution **must** be interviewed under caution prior to removal action taking place.

Unless a disclaimer is signed and there is sufficient evidence to show that the person is acceptable to the country he/she wishes to return to, authority to

remove a person being treated as a NELE must be sought by an HMI from the Deputy Director, or in his absence from an operational Assistant Director.

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