



Home Office

Litigation Operations (OLCU & PM)
The Capital Building
Level 0
Liverpool
L3 9PP

Please refer to www.gov.uk/contact-ukvi-inside-outside-uk

Email

Web www.gov.uk/uk-visas-immigration

106 Fleet Street Chambers
Suite 312, 154-160 Fleet Street
London
EC4A 2DQ

Our Ref GWF076943005
Your Ref ABU/MOHINI/1001
Date 05 August 2024

Dear Sirs

Response to your Pre Action Protocol Letter

This is a letter of response in accordance with the provisions of the Pre-Action Protocol for Judicial Review. A copy of this can be found at: www.justice.gov.uk.

1. The Claimant

Mohini Hersom

2. From

Secretary of State for the Home Department (SSHD)

3. References

GWF076943005
ABU/MOHINI/1001

4. Chronology

Date	Event
02 November 2004	Application for spouse visa lodged
03 November 2004	Visa granted – validity of visa was 03 November 2004 to 03 November 2006
02 December 2004	Initial arrival into the United Kingdom
01 November 2006	Application for Indefinite Leave to Remain (ILR) on the basis of Domestic Violence lodged
08 February 2007	ILR application refused with Right of Appeal (ROA)

04 February 2008	Served with IS151A administrative removal notice (overstayer)
14 February 2008	Application for ILR on the basis of Domestic Violence lodged
10 April 2008	Application for Leave outside the Immigration Rules (LOTR) lodged
25 May 2008	ILR application rejected
03 November 2009	Application for LOTR refused with ROA
20 May 2010	Application for LOTR lodged
05 August 2010	Application for LOTR refused
18 November 2011	Further Submissions application lodged
09 May 2012	Application for LOTR lodged
19 April 2013	Further Submissions application refused
30 July 2013	Application for LOTR refused
07 March 2015	Application for Leave to Remain (LTR) lodged (Human Rights – Article 8)
18 May 2015	Application for LTR (Human Rights) withdrawn
10 June 2015	Human Rights (Articles 3 & 8) application lodged
03 March 2016	Human Rights application refused
11 June 2018	EIU - Dublin 3 application lodged
09 July 2018	EIU - Dublin 3 application accepted
06 March 2019	Served with RED.0001 notice (Illegal Entry: Entry Without Leave)
11 February 2023	Application for UK visit visa lodged (VAF: 2807628)
23 March 2023	Visa refused – no right of appeal
15 May 2024	Application for UK visit visa lodged (VAF: 3756987)
10 June 2024	Visa refused – no right of appeal
22 July 2024	Pre-Action Protocol PAP letter received challenging decision to refuse entry clearance

15 May 2024	Application for UK visit visa lodged (VAF: 3756987)
10 June 2024	Visa refused – no right of appeal
22 July 2024	Pre-Action Protocol PAP letter received challenging decision to refuse entry clearance

5. Details of the matter being challenged

You wrote to the Home Office on 22 July 2024, which we received on the same day.

You have raised the following grounds of challenge:

Ground 1: The decision to refuse your client’s entry clearance application is unreasonable, disproportionate and irrational as the applicant’s circumstances have changed.

Ground 2: The entry clearance officer overlooked that the applicant wishes to visit her father who is in ill health.

You have asked for the following relief:

For the SSHD to reconsider the decision and issue your client entry clearance.

6. Response to the matters raised

The SSHD has reviewed their decision of 10 June 2024 in light of the evidence and representations you have made and is satisfied that the decision is in accordance with the law.

Ground 1: The decision to refuse your client’s entry clearance application is unreasonable, disproportionate and irrational.

i) You stated your client was granted asylum in Ireland and received a residence permit to live in Ireland, and that she will also be able to apply for naturalisation in Ireland next year.

As the entry clearance officer stated in their decision “Records show that you entered the UK on 2 December 2004 on a Spouse visa, issued 3 November 2004 valid until 3 November 2006.

On 01-11-06-you made an application for ILR which was refused with ROA on 08-02- 2007.

On 04-02-08 you were served as an Overstayer.

On 14-02-08 you made a further application to remain which was rejected on 25-05- 08.

On 10-04-08 you made an application for Leave outside the Rules which was refused with Right of Appeal on 3 November 2009.

On 20-05-2010 another application for Leave Outside the Rules was made, which was refused on 5 August 2010.

On 18-11-2011-Further submissions application made, refused on 19-04-2013
09-05-2012-Leave Outside the Rules application made, refused on 30-07-2013

10-06-2015-Human Rights application made, refused on 03-03-2016

11-06-2018-EU Dublin case raised, your case was accepted on 2 July 2018 and transferred there. On 06-03-2019, you were encountered and served documents as an Illegal Entrant for attempting to re-enter the UK via Ireland.”

Part 9.3.1 Immigration Rules states *“An application for entry clearance, permission to enter or permission to stay must be refused where the applicant’s presence in the UK is not conducive to the public good because of their conduct, character, associations or other reasons (including convictions which do not fall within the criminality grounds).”*

V 3.1 states *“The applicant must not fall for refusal under Part 9: grounds for refusal.”*

Given your client’s immigration history, the SSHD concludes that the entry clearance officer’s decision to refuse your client’s entry clearance was reasonable under application of the Immigration Rules 9.3.1.

Therefore, it was not necessary to assess whether your client meets the requirements under appendix V of the Immigration Rules.

Ground 2: The entry clearance officer overlooked that the applicant wishes to visit her father who is in ill health.

“Human rights claims in visit applications: caseworker guidance” published on the www.gov.uk website states *“If the application states that it is a human rights claim, and the applicant provides supporting reasons or evidence, you must go on to consider that supporting material to establish whether a claim has been made that is capable of engaging human rights.”*

It is noted that your client provided a cover letter with her entry clearance application, which she states her father is in ill health and she would like to visit him before his death.

It is also noted that the entry clearance officer acknowledged the compassionate reasons for the visit in their decision; “I acknowledge how important family visits are and I have taken into consideration any compassionate elements of this application and the representations made on your behalf by 160 Fleet Street Chamber.”

Policy guidance states that the only relationships that may engage Article 8 in visit applications are:

- Spouse (or other life partner)
- Parent (where applicant is a minor child)

- Minor child.

As the applicant's claim does not fall within one of these relationships, their application does not engage Article 8.

Therefore, refusal of your client's entry clearance application does not amount to an implied human rights claim in visit applications.

Current guidance states *"If the matters raised are not capable of engaging human rights, no human rights claim has been made and the application can be refused with no right of appeal."*

Consequently, the decision to refuse your application for entry clearance is maintained.

7. Details of any other interested parties

None cited.

8. Address for service of court documents

In light of the above, the Pre- Action Protocol is now considered to be concluded.

However, if you wish to proceed to Judicial Review, the service address for Judicial Reviews issued in the Upper Tribunal is:

Litigation Allocation Unit, 6 New Square, Bedford Lakes, Feltham, Middlesex, TW14 8HA.

The service address for Judicial Reviews issued in the Administrative Court is:

Government Legal Department, 102 Petty France. Westminster, London, SW1H 9GL.

Please note Judicial Reviews issued in the Administrative Court should continue to be served on the Government Legal Department.

The SSHD would like to remind you and your client that an application for Judicial Review should be made promptly and in any event within three months of the date of the action against which the claim is to be made. The service of this Pre -Action Protocol letter does not affect this time limit.

From 6 April 2016, immigration applications may be refused if the applicant owes a litigation debt to the Home Office. We wish to remind you that failure to pay any costs awarded against you by the court or tribunal should you proceed with litigation in this case may affect the success of any future immigration application that you make.

Yours faithfully,

Litigation Operations- Liverpool
Appeals, Litigation and Admin Review
On behalf of the Secretary of State for the Home Department

The Data Protection Act 2018 governs how we use personal data. For details of how we will use your personal information and who we may share it with please see our

Privacy Notice for the Border, Immigration and Citizenship system at <https://www.gov.uk/government/publications/personal-information-use-in-borders-immigration-and-citizenship>. This also explains your key rights under the Act, how you can access your personal information and how to complain if you have concerns.