

From: European Policy Team

Subject: UK born children of Turkish ECAA applicants

Date: 2 October 2014

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Purpose of notice

1. To provide caseworkers with guidance when dealing with applications for settlement under the Turkish ECAA provisions which include a UK born child.

Background

2. Under the provisions of the Turkish European Communities Association Agreement (ECAA), Turkish nationals can be granted settlement provided all the relevant conditions are met. These include that they have completed four years under this category and that their business has been active throughout that period. Family members, including spouses, civil partners and children of such business persons, may also be eligible for indefinite leave to remain, but only where they have already been granted leave as a dependant in the ECAA category.
3. In a small number of cases, applicants have children born to them in the UK while they are resident here as a business person. However, rather than apply for leave to remain under the ECAA for such children, the parents simply add them as their dependants when they submit their settlement applications. Under the terms of the ECAA, the fact that such minors have never been granted leave in this category makes them ineligible for settlement. As a consequence, the current approach is to refuse the children's applications.
4. Legal advice has suggested that simply refusing such children without any indication of an alternative route to settlement may give rise to legal challenge. Granting immediate settlement to UK born children who have never held leave is not possible under the ECAA or desirable from a policy perspective. However, parents should be made aware that they have the option of regularising their child's position under paragraphs 304-08 of the current Immigration Rules.
5. This notice provides case workers with details of what steps to take when dealing with settlement applications under the ECAA which include UK born children.

Actions to take in ECAA settlement cases where the dependent child has previously been granted leave in this category.

6. Under the 1973 Immigration Rules, dependent children may be granted settlement under the ECAA if the following conditions are met.
- The applicant does not fall for refusal under the general grounds and is not an illegal entrant
 - The applicant is the child of a parent who, at the same time, is being granted indefinite leave to remain (ILR) as a Turkish ECAA businessperson.
 - The applicant has, or was last granted, leave as the child of the Turkish ECAA businessperson who is being granted ILR.
 - The applicant is not married or in a civil partnership, has not formed an independent family unit and is not leading an independent life.
 - Both of the applicant's parents are lawfully in the UK, or are being granted leave at the same time as the applicant.

Where a UK born child has been granted leave as a dependant under the ECAA category, caseworkers should decide the application in the normal way in line with current guidance. The relevant guidance on Horizon covering dependent children can be found via the link below.

Turkish ECAA guidance¹

Actions to take in ECAA settlement cases where the dependent child has not previously been granted leave in this category.

7. Where a caseworker is dealing with a settlement application under the Turkish ECAA business provisions which includes a UK born child who has not previously been granted leave in this category, the following actions should be taken.
- The parents' applications should be assessed and an outcome entered on GCID in the normal way, in line with current guidance.
 - The child's application for ILR should be refused on the basis that they do not have, or have not previously been granted, leave as the dependant of a Turkish ECAA business person.
 - The child's refusal should be entered as an outcome on GCID
 - Where the parents are refused ILR, the decision notices and documentation should be sent to all the applicants (including the child) in the normal way.

^{1 1} Link to staff intranet removed. Equivalent public guidance can be found at:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/286715/Turkish_ECAA_business_guidance_v1_0EXT.pdf

- Where the parent or parents have been granted ILR caseworkers should include the letter attached at Annex A of this notice when sending out the decision/documentation.

Duration of notice

8. The ECAA Business Guidance will be updated in due course. Until then, this notice will remain in force.

Enquiries

9. Any policy enquiries on this Notice should be addressed to *<name and phone number redacted – section 40(2)>* or to the European Operational Policy inbox
EuropeanOperational@ukba.gsi.gov.uk

<Name redacted – section 40(2)>

European Operational Policy, Operational Policy and Rules Unit

ANNEX A: LETTER TO BE SENT TO ECAA BUSINESS PERSONS WHO HAVE APPLIED FOR SETTLEMENT AND HAVE INCLUDED A UK BORN CHILD WITHOUT LEAVE AS THEIR DEPENDANT

Dear [insert]

Thank you for your recent application for settlement under the provisions of the Turkish European Communities Association Agreement (ECAA) relating to business persons. Your application also featured a child/children who was seeking settlement in the UK. In order for such children to be granted indefinite leave to remain (ILR) as the dependant of a Turkish business person, they must have or have last been granted leave to remain in the Turkish ECAA category. According to our records and the evidence submitted your child has never been granted such leave. This means that s/he has not met all the relevant ILR requirements and so their application cannot be granted.

While your child does not qualify for ILR via the ECAA route, they may be eligible for settlement under a section of the current Immigration Rules. Where someone is under 18 and the child of a person who has settlement in the UK, they can apply for ILR under paragraphs 304-8 of the Rules. In order to be granted settlement under these paragraphs the child must meet the following conditions.

The child:

- (i) (a) is accompanying or seeking to join or remain with a parent or parents who have, or are given, leave to enter or remain in the United Kingdom; or
(b) is accompanying or seeking to join or remain with a parent or parents one of whom is a British Citizen or has the right of abode in the United Kingdom; or
(c) is a child in respect of whom the parental rights and duties are vested solely in a local authority; and
- (ii) is under the age of 18; and
- (iii) was born in the United Kingdom; and
- (iv) is not leading an independent life, is unmarried and is not a civil partner, and has not formed an independent family unit; and
- (v) (where an application is made for leave to enter) has not been away from the United Kingdom for more than two years.

Such applications can be made using form SET(F). This form together with guidance notes on how to complete it can be accessed via the link below.

<https://www.gov.uk/government/publications/application-to-settle-in-the-uk-as-a-child-under-18-form-setf>

You should be aware that such applications are chargeable and that the fee is not refundable. Details of the cost of the application and how payment can be made can be found on pages 2-3 of the SET(F) form.

If you are unsure whether your child meets the conditions outlined above, you may first wish to seek legal advice before submitting a SET(F) application.

Yours sincerely

[insert details]