

OPI 177 Issued 2009

Clarification to guidance on applying paragraph 320 7 (a) and (b) of immigration rules- the question of 'innocent mistakes'.

Summary:

Changes to guidance on handling 320 7 (a) and (b) cases to reflect Liam Brynes' letter to ILPA that stated that 320 7 (a) and (b) "are not intended to catch people who make innocent mistakes on their applications"

Main Text of the OPI:

Paragraphs 320 (7A) and 320 (7B): when is an "innocent mistake" an "innocent mistake" when related to previous refusals / Leave to Remain applications?

Paragraph 320 (7A) makes it a mandatory refusal if false representations are made in an application. Paragraph 320 (7B) makes it a mandatory refusal if there has been a previous immigration breach or (7A) refusal. However, there will be cases where this is not so clear cut. The ECO needs to be satisfied that deception has been employed and/or the applicant intended to deceive the ECO. The majority of cases where this requires the ECOs judgement will relate to how an applicant has completed the VAF, most usually in relation to the questions about previous visa refusals or the grant or refusal of Leave to Remain (LTR). A prime example of this is when an applicant ticks the wrong box on the VAF in answer to the question 'have you previously been refused a visa' – e.g. an applicant has ticked that they have not previously been refused a UK visa, but has presented a passport containing a refusal stamp and/or a previous refusal notice. This should not be considered to be deception - therefore paragraph 320 7 (a) should not apply. Read the full guidance.

Cases of "innocent mistake" must be referred to the ECM where the ECO intends to issue. The ECO should update PROVISIO to indicate why this was considered a case of "innocent mistake", rather than one of deception.

320 (7A) and (7B), although mandatory grounds for refusal, are not intended to catch those who make innocent mistakes in their application. If you decide that an innocent mistake has been made and that a visa will be issued, you should consider advising the applicant that in any future application they must include details of any previous refusals or other adverse decisions / details of LTR applications. Otherwise, they may continue to make the same omission.

Last Updated: 27 November 2009