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25 June 2020

Dear Sirs,

**FAO: Policy Team**

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**LETTER REGARDING  
ECAA BUSINESS PERSONS UNABLE TO RETURN TO THE UK**

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**INTRODUCTION**

1. I am instructed by the Turkish Association to Protect the Rights of Industrial and Commercial Businesspersons in the UK under the ECAA (“TAPRICB”) to write this letter to highlight the position of ECAA Businesspersons unable to return to the UK due to visas expiring since the global COVID19 pandemic began and to request that some official guidance is published for persons in this category.
2. TAPRICB consists of a large group of Turkish Businesspersons who aim to protect the rights of ECAA Businesspersons as a whole, and who aim to achieve clarity in the legal options open to ECAA applicants.
3. If there are more appropriate contacts to whom this should be addressed, please let me know and I will be pleased to liaise as required.

## **PROBLEM:**

4. There are many hundreds of Turkish Business Persons who have found themselves trapped outside the UK and unable to return before the expiration of their BRPs due to the COVID-19 pandemic travel restrictions.
5. Lockdown restrictions have been in place in the UK for over three months, and the situation has been entirely unpredictable throughout so families have found themselves separated, and business persons have been unable to return to their businesses. This puts the businesses at risk as well as the employees of those businesses. There is a particular need for action in relation to the children of Business Persons who have reached the age of 21 since first being granted status in this category.
6. There is no route for Turkish Business Persons to re-enter the UK after their BRP cards expire. It is vital that Turkish Business Persons and their family members, including children who have now turned 21 years old, are able to re-enter the UK and continue on a route to settlement.
7. This letter seeks to highlight the difficulties and asks that a solution is provided.

## **BACKGROUND**

8. The agreement establishing an association between the EEC and Turkey was signed at Ankara on 12 September 1963 (the “**Ankara Agreement**”). The Ankara Agreement was concluded, approved and confirmed on behalf of the Community by Council Decision 64/732/EEC of 23 December 1963 (OJ 1973 C113, p.1)
9. The Additional Protocol to the Ankara Agreement was signed at Brussels on 23 November 1970. It was concluded, approved and confirmed on behalf of the Community by Council Regulation (EEC) No 2760/72 of 19 December 1972 (OJ 1973 C113, p.17).
10. Article 41(1) of the Additional Protocol of 1973, commonly referred to as the ‘standstill clause’ provides that:

*“The Contracting Parties shall refrain from introducing between themselves any new restrictions on the freedom of establishment and the freedom to provide services.”*

11. The UK became bound by the ECAA and the Additional Protocol when it joined the European Economic Community, thereby becoming a Member State, in 1973. Accordingly, the Secretary of State must apply the domestic provisions as they were within the Immigration Rules in force in 1973 (the “**1973 Rules**”), in accordance with the stand-still provision under Article 41(1).
12. The House of Commons Paper 510 (“HC510”) applies to extension applications for Turkish nationals seeking to extend their stay in the UK having set up a business.
13. Article 41(1) of the Additional Protocol has direct effect in Member States as was confirmed by the determination of **C-37/98 Savas (External relations) [2000] ECR I-2927 (11 May 2000)** at §71.
14. Article 9 of the Ankara Agreement is a general non-discrimination provision applicable to all Turkish Business Persons. The correct approach to this has been considered in **C92/07, Commission v Netherlands [2010] ECR I-03683**, where charging a fee higher than that charged to EU nationals was discrimination, as the difference in fees could not be justified. The aim is to encourage integration and parity
15. Under the current circumstances, it cannot be justified that Turkish Business Persons are not afforded a route to return to the UK while other visa applicants are able to apply for entry clearance and have a route to return under the Immigration Rules.
16. Currently, Turkish Business Persons can apply under HC509 from outside the UK, or HC510 from within the UK. They cannot extend their stay from outside the UK.
17. Turkish Business Persons outside the UK thus have very limited options. These are:
  - (A) make an inappropriate entry clearance application, or
  - (B) apply for a visa waiver.
18. Turkish Business Persons outside the UK have a legitimate expectation to be able to return to the UK in the same immigration category where their leave has expired since the start of the pandemic.
19. In the recent Court of Appeal case, **R (otao Alliance of Turkish Business People Limited) v Secretary of State for the Home Department [2020] EWCA Civ 553**, Flaux LJ considered when a legitimate expectation can arise, and determined:

50 *“it is common ground that before a statement or representation can be relied upon as giving rise to a legitimate expectation, it must be clear, unambiguous and devoid of relevant qualification and Ms Ford QC accepted that what was required was also a promise or representation that the present policy will continue...”*

20. In the current instance, the Home Office has repeatedly stated that no-one shall suffer ‘detriment’ due to the COVID19 pandemic having an impact on their immigration status.
21. The meaning of ‘detriment’ is clear - it means negative repercussions on immigration status, such as leave expiring or overstay not being counted against people. Inherent in the statement is a promise that the commitment would continue until situations which arose as a result of the pandemic were resolved. It is in reliance on the legitimate expectation which has arisen due to repeated Home Office statements, that the TAPRICB ask for assurances that there is either an entry clearance route opened for extensions, or that there is an undertaking to allow for visa waivers to be issued where individuals’ leave expired from 23 March 2020.

## **EXAMPLE SITUATIONS**

### *Family One*

22. One family of four “Family One” are composed of mother (Main Applicant), father, a son now aged 21, and a daughter under 21. This family is separated: the father and daughter are in the UK, where the father has been seriously ill, and mother and son are unable to return to the UK as their leave has expired in May. The Main Applicant is thus unable to return to her business or rejoin her family. The mother and son have received no response from the COVID team and need assurances that they can make an entry clearance extension and that the son (aged over 21) will be able to return to join his family on the same route.

### *Family Two*

23. Family Two are a family of five, all are outside the UK and their leave expired in early June. The parents have been granted COVID extensions to 31 July 2020 (despite being out of the UK) and have had Visa Waivers denied due to a lack of ‘compelling and compassionate’ reasons. The family needs assurances that an entry clearance extension application will be open to them.

### *Family Three*

24. Family Three are all outside the UK - they are parents, a daughter over the age of 21, and a younger daughter. They have submitted a visa waiver application but have not had a response. They need assurances that they can make an entry clearance extension and that the daughter (aged over 21) will be able to return with her family.

*Family Four*

25. Family Four are also a divided family. The Main Applicant - the mother, and daughter are in the UK and have been able to apply to extend their stay in-country. The father and elder son, who is now over the age of 21, are trapped outside the UK. The son had become ill prior to the expiry of his visa and could not travel back to the UK. The father and son have erroneously been granted COVID extensions to 31 July 2020 and have had visa waiver applications denied. They need assurances that they will be allowed to make an entry clearance extension application, and that the son, who is over 21, will not be refused admission on this basis.
26. The situations are common and all involve interference with family life and business interests in the UK. Turkish Business Persons and their family members are trapped outside of the UK and have been told to make COVID extension applications or to apply for visa waivers, only for these to be refused. The community at large requires assurances that they will be admitted following entry clearance extension applications.

**A. ENTRY CLEARANCE APPLICATIONS**

27. At present, Turkish Business Persons are not able to extend their leave from outside the UK. Unlike many immigration categories, such as Tier 1 (Entrepreneur) or (Investor), where an applicant can extend their leave in an entry clearance application, Turkish Business Person applicants simply do not have this option.
28. The gov.uk page <https://www.gov.uk/turkish-business-person/extend-your-visa> makes this clear:

## Extend your visa

You may be able to apply to extend your stay in the UK under a Turkish Businessperson visa.

You should include any dependants who are on your current visa on your application to extend - including children who have turned 18 during your stay.

You should apply before your current visa expires.

## Eligibility

You must be in the UK to extend your visa.

29. From inside the UK, Turkish Business Persons are able to extend their leave and this is normally granted for three years (36 months). The applications are free of charge and require evidence of ongoing business activity, that the Business Person has devoted assets to the business and they are able to bear the share of liabilities the business incurs, that they are not employed and do not have recourse to public funds.
30. The Home Office only considers applications using specified forms and specified application methods, and the only application which Turkish Business Persons can make as an entry clearance application is that of an initial applicant, which neither fits their circumstances nor what they are actually applying for.

### *Requirements of HC509*

31. The entry clearance application open to them under HC509, requires proof that an applicant is bringing funds to the UK under paragraph 31 or 32 of HC509. Many applicants could run the risk of refusal due to not being able to provide the type of evidence required in an initial application due to being a year or more on from the stage of holding funds available to invest in a business.
32. The HC509 entry application is ill-suited to the needs of Business Persons needing to extend and who have already invested their funds in the UK and have ongoing ties and employment,

as they may not be able to demonstrate that they have further funds to invest if all funds are already invested.

33. This would mean that Turkish Business Persons seeking to extend their leave could run the risk of applications being refused as no provisions have been made for Caseworker training and no information is published on gov.uk.

*Children who are now over the age of 21*

34. Importantly, many families with children who have entered the category as dependants have now reached the age of 21, so are ineligible to make initial applications any longer due to their age.
35. It is vitally important to ensure that families suffer no disadvantage or detriment, to ensure that children who have turned 21 years old since being granted entry as dependants are able to extend their stay in the UK. It would be incredibly prejudicial to any family if a child who had not formed an independent life were no longer able to extend their leave in line with the parents simply because of the restrictions of an entry clearance form and the impact of the pandemic.
36. Specific recognition of the position of dependants who have now attained the age of 21 is sought in relation to entry clearance applications.
37. As Caseworkers are not able to create policy and must simply follow the instructions given to them, it is vital that there are instructions given to the caseworkers, and that such policies are published.
38. In the recent Upper Tribunal case of ***BH (policies/information: SoS's duties) Iraq [2020] UKUT 00189 (IAC)*** the headnote reiterates that:

*(a) The Secretary of State has a duty to reach decisions that are in accordance with her policies in the immigration field. Where there appears to be a policy that is not otherwise apparent and which may throw doubt on the Secretary of State's case before the tribunal, she is under a duty to make a relevant policy known to the Tribunal, whether or not the policy is published and so available in the public domain. Despite their expertise, judges in the Immigration and Asylum Chambers cannot reasonably be expected to possess comprehensive knowledge of each and every policy of the Secretary of State in the immigration field.*

*(b) In protection appeals (and probably in other kinds of immigration appeals), the Secretary of State has a duty not to mislead, which requires her to draw attention to documents etc under her control or in the possession of another government*

*department, which are not in the public domain, and which she knows or ought to know undermine or qualify her case...*

39. The last Guidance, ***ECAA business guidance Version 10.0, published for Home Office staff on 30 March 2020*** is silent on the possibility of entry clearance extensions, or approach that would be taken to them, despite post-dating lockdown commencing on 23 March 2020.
40. As such, there is no information provided as to how a Turkish Business Person or their family members are expected to re-enter the UK.
41. There is no information about the length of visa that an applicant would be granted in an entry clearance extension application even if one were to be granted: whether this would be three years or one year. It is clearly more burdensome for an applicant to have to apply to renew their status every 12 months than once every three years.
42. Turkish Business Persons have a legitimate expectation of being able to return to the UK in the same category and for their immigration status to suffer no detriment due to the pandemic.
43. It is requested that the Turkish Business Person policy guidance is updated and that the gov.uk site sets out the route for Business Persons to re-enter the UK.

## **B. VISA WAIVERS**

44. There is no guidance published on how one might properly apply for a visa waiver to enable return to the UK to submit an in-country extension application.
45. Information from the Coronavirus Immigration Team is scant:

*We have already put in place a range of measures to support those affected by the COVID19 outbreak and are considering further adjustments. These include a proposed concession to the continuous residence requirements for those trapped overseas due to COVID-19 travel restrictions, who should be in the UK to renew their leave. Please continue to check [GOV.UK](https://www.gov.uk) for the latest position. No one will be disadvantaged by the impact of COVID-19.*

*If you are able to secure a return flight to the UK after your leave expires, we will consider a visa waiver to facilitate travel at that time. Requests for visa waivers should be sent to [CIH@homeoffice.gov.uk](mailto:CIH@homeoffice.gov.uk) with the subject line 'Visa Waiver to travel'.*

46. Despite the Home Office's published commitment, repeated by the CIT that "*no-one will be disadvantaged by the impact of COVID-19*", there is a clear disadvantage being suffered by Turkish Business Persons who are unable to return to the UK to re-join their businesses or potentially also their family members. They have no route to return and have a legitimate expectation to expect that one is facilitated. Failure to do so would constitute a restriction on the ability to provide services and integrate into the UK as
47. Many Turkish Business Persons have applied for a visa waiver only for this to be refused due to a lack of '*compelling or compassionate reasons*'. Some are being told to make an inappropriate application and apply for the COVID extension applicable to in-country applicants. Neither of these outcomes are satisfactory.
48. The TARICBP have compiled many examples of individuals and families who are trapped outside the UK - some of whom have been illogically granted COVID extensions up to 31 July 2020 while outside the UK and many of whom have been refused visa waivers to enable their return.
49. It is vital that there is a formal procedure instituted so that Business Persons can return to their businesses and help the economy to recover from COVID.

**C. REQUEST FOR GUIDANCE AND UNDERTAKING THAT THERE WILL BE A ROUTE FOR TURKISH BUSINESS PERSONS AND DEPENDANTS TO RETURN**

50. The TAPRICB request that the position of Turkish Business Persons stranded outside the UK is recognised and that provisions are put in place to enable the speedy issuance of appropriate visas to those who need to extend their stay from outside the UK.
51. There has been no information published by the Home Office in relation to Coronavirus Guidance for Ankara applicants. The Guidance has been updated regularly - it was published on 24 March 2020 and has been updated on 19 occasions up to and including 22 June 2020. ECAA applicants have not been mentioned in the Guidance at all, despite specific provisions appearing for many categories - Tier 1, Tier 2, Tier 4, Tier 5, family applicants, etc.
52. As a large and economically vital group for the UK, it is imperative that the Home Office enable the return of the Business Persons so that they can rejoin their businesses, families and lives in the UK.

53. If the Home Office position is that visa waivers are not appropriate for this group, it is requested that the Guidance is updated to specifically allow for applications for extensions to be made from outside the UK, and for the standard endorsement for an extension to be for 36 months, rather than the standard entry clearance length of 12 months.
54. If extensions of leave from outside the UK are to be the route for return, it is requested that there is specific provision to recognise the position of children who have now attained the age of 21.
55. The Home Office has repeatedly published its commitment that migrants will not be “disadvantaged” or “suffer detriment” due to the impact of COVID-19, and these clear statements give rise to a legitimate expectation that individuals will be able to return to the UK where they have been stuck outside due to the impact of the pandemic.
56. The Home Office has been made aware of the situation by individual MPs but a more global approach is required.
57. The TAPRICB do not wish to have to start litigation proceedings concerning the legitimate expectation and promises made by the Home Office not being respected but would be prepared to do so if no Guidance / undertakings are provided so that there is a route provided for Turkish Business Persons overseas to return to the UK to continue to enjoy their right of establishment within the UK.
58. I would be grateful for an acknowledgement of this correspondence and can be reached at [catherine.taroni@richmondchambers.com](mailto:catherine.taroni@richmondchambers.com) and 0203 617 9173.
59. We look forward to your response.

Yours faithfully,



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