

IMPORTANT CHANGES TO THE CERTIFICATE OF APPROVAL SCHEME (UK)

In R(Baiai) V. Secretary of State for the Home Department (The Baiai Case), the House Of Lords considered the compatibility of the Certificate of Approval Scheme (COA) set up under section 19 of the Asylum and Immigration (Treatment of Claimants) Act 2004, with Article 12 ECHR (Right to marry and establish a family).

The scheme required certain persons not settled in the UK and subject to immigration control to get the permission of the Secretary of State before they marry in the UK. Alternatively, they had to obtain entry clearance for this purpose. Those who wanted to get married in the Church of England were exempted.

This was deemed discriminatory by many groups who campaigned against the COA. The scheme, according to them, purported to label persons who did not satisfy the requisite leave to remain criterion, as persons who wanted to marry to circumvent immigration rules.

The original policy, denied permission to:

1. All those who are in the UK without leave ;
2. Those whose grant of leave to enter or remain in the UK was less than six months in total; and
3. Those who did not have at least 3 months' leave to remain at the time of their application.

The House of Lords held that this was incompatible with Article 12 ECHR. Their Lordships also held that the prescribed application fee was incompatible with Article 12.

The UK Border Agency (UKBA) has changed the scheme to give effect to the judgement in the Baiai Case. The changes apply to you if you fall within any of the categories listed below;

1. Your current leave to enter or remain in the UK was not granted for more than 6 months and you do not have at least three months of your permitted stay remaining;
2. You do not have valid leave to enter or remain (illegal entrants, those who have overstayed their leave to remain) and have until now been refused unless there are exceptional compassionate circumstances for granting a certificate of approval;
3. You applied under the original scheme, and at the time of your application you had limited, but insufficient leave to enter or remain to qualify and were refused a certificate of approval (you may submit a request for reconsideration of your application).

It is important to note that where a person applies for a certificate of approval with the intention of engaging in a marriage of convenience, such a marriage will not enhance the applicant's immigration history.

If you fall within the above category, the UKBA may write to you requesting for further information in support of your application. Their request for further information is to assist them in determining whether an applicant's proposed marriage or civil partnership is genuine. The answers to these questions need to be provided in an affidavit, clearly signed and dated by the applicant.

Case Scenario:

A and B courted for six months in Ghana. They were planning their wedding when B, a Belgian citizen had to travel back to Belgium. A's efforts to join B were not successful so they separated. A travels to UK and was given six months leave to enter. A meets B after staying in UK for four months. They decide to get married in UK.

A may apply for the COA so that they get married in the UK. In so far as they are able to get married, A may successfully apply for leave to remain in the UK as the spouse of an EEA citizen whether she has current leave to remain or not (Metock & Others).

In addition, the UKBA has given effect to the House of Lords decision by suspending the application fees for a COA. They suspended the fees on the 9th of April 2009. Invariably, an applicant will not pay an application fee on or after the 9th of April 2009.

Indeed you may be entitled to a refund of your application fee if you applied for a certificate of Approval between 1st February 2005 and 8th of April 2009 under current UK Border Agency policy for the return of application fees. You can apply for a refund if you can demonstrate that the payment of the fee caused you real financial hardship. The deadline to request for a refund is 31st July 2010.

It is important to note that the grant of a COA does not mean that you will automatically be granted further leave to remain following the marriage ceremony.

Disclaimer: This article only provides general information and guidance on immigration law. The specific facts that apply to your matter may make the outcome different than would be anticipated by you. The writer will not accept any liability for any claims or inconvenience as a result of the use of this information.