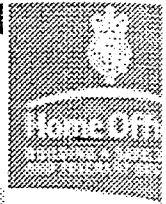


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CHAPTER 18

IMMIGRATION DIRECTORATES' INSTRUCTIONS

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THE LONG RESIDENCE CONCESSION

1. INTRODUCTION

There is no provision within the Immigration Rules for a person to be granted indefinite leave to remain solely on the basis of the length of his or her residence.

The grant of indefinite leave to remain on the basis of lengthy continuous residence is discretionary, each case should be considered on its merits.

1.1 Background

On 14 October 1969, the United Kingdom ratified the European Convention on Establishment, Article 3(3) which provides that nationals of any contracting party who have been lawfully residing for more than 10 years in the territory of another party may only be expelled for reasons of national security or for particularly serious reasons relating to public order, public health or morality. Home Office practice has been to extend this provision in three respects:

- to include all foreign nationals;
- to grant indefinite leave rather than simply refrain from removing such a person; and
- to allow those who have been here illegally to benefit.

2. CONSIDERATIONS

When considering an application, where a person has 10 years or more *continuous lawful* residence, or 14 years *continuous* residence of *any legality*, indefinite leave to remain should normally be granted in the absence of any strong countervailing factors, such as:

- an extant criminal record, apart from minor non-custodial offenses; or
- deliberate and blatant attempts to evade or circumvent the control, for example by using forged documents, absconding, contracting a marriage of convenience etc.

Criminal offenses which are spent under the Rehabilitation of Offenders Act and behaviour which happened 5 years or more ago should *not* normally be sufficient to outweigh positive ties with the United Kingdom. Where the continuous residence is in excess of 14 years unless the countervailing factors are exceptionally serious indefinite leave should normally be granted.

Applications from people who have *not* completed *10 years continuous lawful residence* should normally be refused, unless there are very strong compelling circumstances. The strength of ties with the United Kingdom, the continued ties with the home country, the total length of the continuous period and the proportion of it which is lawful are the primary determining factors when deciding to grant or withhold indefinite leave to remain.

3. LAWFUL RESIDENCE

Where a person has completed 10 years continuous lawful residence he should normally be granted indefinite leave to remain without enquiry.

When considering whether a person has remained in the United Kingdom lawfully for 10 years the following breaches of conditions may for the purposes of this concession be considered as lawful:

- a short delay in submitting an application, provided the *application is subsequently granted*;
- any period between the submission and determination of an appeal, *if it is successful*;
- where an appeal is unsuccessful, but leave is subsequently granted, the period between submitting the appeal and the determination may be treated as lawful if, for example, the leave was granted on the recommendation of the adjudicator, leave was granted during the period before the determination or where a further successful application was submitted shortly after the determination.

The time IND take to decide and inform the person of the outcome of an in-time application should be included as continuous lawful residence.

4. UNLAWFUL RESIDENCE

Indefinite leave should normally be granted to a person who has completed a continuous period of residence of 14 years or more, regardless of its legality. Leave should only be refused if there are serious countervailing factors.

Where a person has completed between 10 and 14 years continuous residence, but where it is not all lawful the quality and length of the residence should be the guiding factors. The length of the period of continuous residence and the proportion of it which is lawful and the strength of the ties to the United Kingdom (particularly family ties) should all be taken into account. The factors in each case must be considered on the individual merits.

5. WHAT CONSTITUTES CONTINUOUS RESIDENCE

Continuity need not be broken by a small number of short absences abroad of up to 6 months at any one time during the 10/14 year period. Short absences cannot be said to disrupt or sever ties with the United Kingdom. These absences should normally be ignored, unless such trips are frequent. In such cases the reasons for such frequent trips should be requested, as the applicant may have a business or be maintaining family ties abroad. In some cases a lengthier absence may still not sever the ties to the United Kingdom. In each case the strength of the ties to the United Kingdom, the reason for, and effect of the absence should be taken into account.

Continuity of residence should be considered as being broken if the applicant:

- was removed or deported from the United Kingdom;
- at the time of his departure there is evidence to indicate that he had no intention of returning or there was an absence of strong ties to the United Kingdom; or
- a lengthy absence which can be considered to have severed ties with the United Kingdom.

6. TIME SPENT FOLLOWING THE SERVICE OF NOTICE OF INTENTION TO DEPORT

Where a person has been served with a notice of intention to deport account should be taken of the decision in the case of Ofori. This judgement held that the Secretary of State was entitled to conclude that the extra period of residence gained by the appellant while pursuing his appeal should not count towards the 14 years continuous residence of any legality required under the LRC.

However, each case should be considered on its merits and the length and quality of the overall period of residence should still be taken into account, together with all other relevant factors, and balanced against the need to maintain an effective control.

7. TIME SPENT EXEMPT FROM CONTROL

Any period of time that a person has spent exempt from the Rules will count towards his residence but a person cannot be granted indefinite leave to remain while he remains exempt. (See *Chapter 14 section 1, Persons Exempt From Control*)

8. STUDENTS SPONSORED BY A GOVERNMENT OR INTERNATIONAL AGENCY

Where a person is sponsored by a government or international agency and has applied for indefinite leave to remain under the long residence concession, leave may be granted without a letter of consent from the sponsoring body provided all of the relevant criteria are met.

Applications for ILR on the basis of long residence from spouses of sponsored students fall to be considered in the normal way under the terms of the LRC. If granted, it will then be open to the sponsored student to apply for leave in line with their spouse and, if appropriate, such an application may be granted without requesting a letter of consent from the sponsoring body.

9. PESTALOZZI CHILDREN'S VILLAGE TRUST

Applications by Pestalozzi students for indefinite leave to remain under the long residence concession should be considered on their merits in the usual way. A letter of support from the Trust is not required.

10. REFUSAL OF INDEFINITE LEAVE TO REMAIN

Applications that do not meet the criteria set out in the above paragraphs should normally be refused unless the circumstances are particularly exceptional and it would, in view of those exceptional circumstances be unreasonable to consider removal. Any case where it is proposed to refuse the application despite the lengthy residence should be referred to a senior officer.

Applications for indefinite leave to remain on the basis of long residence which fall for refusal should be refused under Paragraph 322(1) of HC 395 (no provision in the Rules).

11. INDECS