

Immigration applications Article 8 (private life & long residence)

This fact sheet provides information on the law relating to the right to private life under Article 8 of the European Convention on Human Rights and long residence. It also provides information on potential applications within and outside the Immigration Rules.

This fact sheet is part of a series of three fact sheets on Article 8. For further information on Article 8 of the European Convention on Human Rights – the right to family and private life – go to www.coramchildrenslegalcentre.com/resources.

If you have any questions about this issue or relating to a refugee or migrant child, young person or family, you can call our Migrant Children's Project advice line on 0207 636 8505 or email mcp@coramclc.org.uk.

- are over 18 but under 25 years old and have spent at least half their life continuously in the UK; or
- are over 18, have lived continuously in the UK for less than 20 years but there would be significant obstacles to their integration into the country to which they would have to go if require to leave the UK.

Residence does not include periods of time spent in prison. However, periods spent in prison do not 'reset' the continuous residence – instead, they suspend the calculation of length of time.

Given the difference in criteria under the Immigration Rules for those aged under 18 and those who are 18 or older, it is vital that children are assisted to regularise their status at the earliest opportunity. If you are working with a child who is undocumented or whose leave to remain is due to come to an end, it is essential that they access legal advice as soon as possible.

Providing evidence

The evidence that will need to be provided to prove long residence is significant – individuals will need to provide evidence of residence for each year they have lived in the UK.

As a professional working with a migrant child or family, you may be asked to provide a report, letter or information relating to the best interests of that child in support of such an application. It is important that you provide as much relevant information as possible, including details of the child's family and private life in the UK; the support that child receives from you or others; links and involvement in school/religious organisations/groups; and what you consider to be in the child's best interests.

Long residence and private life

The right to respect for private and family life derives from Article 8 of the European Convention on Human Rights. Since 9 July 2012, the Home Office has sought to define the right to private life within the parameters of the Immigration Rules. Rules regarding private life and long residence are contained in Part 7 of the Immigration Rules. **[1]** The Home Office also provides detailed guidance on private life and long residence. **[2]**

The criteria for leave to remain applications based on private life, or long residence, are now contained in rule 276ADE. **[3]** An individual will be entitled to a grant of leave to remain under this rule if they:

- Have lived continuously in the UK for at least 20 years; or
- are a child (under 18), have lived continuously in the UK for at least seven years and it would not be reasonable to expect them to leave the UK;

Suitability requirements

The changes to the Immigration Rules in July 2012 also introduced new suitability requirements: rules that an individual must not meet if they wish to be granted leave to remain under private life and long residence. These are split into mandatory refusals and discretionary refusals. [4]

An individual will be refused leave to remain if:

- they are currently the subject of a deportation order;
- they have been convicted of an offence for which they have been sentenced to prison for at least four years;
- they have been convicted of an offence for which they have been sentenced to imprisonment for less than four years but at least 12 months (unless 10 years have passed since the end of the sentence);
- they have been convicted of an offence for which they have been sentenced to imprisonment for less than 12 months (unless five years have passed since the end of the sentence);
- their offending has caused serious harm or they are a persistent offender who shows a particular disregard for the law;
- their presence in the UK is not conducive to the public good because their conduct, convictions, character, associations, or other reasons, make it undesirable to allow them to remain in the UK; and/or
- they have failed, without reasonable excuse, to
 1. attend an interview;
 2. provide information;
 3. provide physical data; or
 4. undergo a medical examination or provide a medical report.

An individual may be refused leave to remain if:

- false information, representations or documents have been submitted in relation to the application (with or without their knowledge);
- there has been a failure to disclose material facts in relation to the application;
- their outstanding NHS charges have a total value of at least £500 (previously £1,000);
- a maintenance and accommodation undertaking has been requested but not provided; and/or
- they or their partner has not complied with the investigation of their proposed marriage or civil partnership.

The Rules also state that, when considering whether the presence of the applicant in the UK is not conducive to the public good, any legal or practical reasons why the applicant cannot presently be removed from the UK must be ignored.

It is important that a child or young person considers whether they may fall foul of any of these requirements – particularly the mandatory refusals. It should be noted that failing to disclose material information or using false information is a discretionary ground of refusal and may also constitute an offence under the Immigration Acts.

Children and private life/long residence

One of the most frequently misunderstood rules relates to children who have lived in the UK for seven years. It is important to note that there is no automatic grant of leave to remain simply because a child has lived in the UK for seven years. The test is seven years residence and showing that it would be unreasonable to expect the child to leave the UK.

The Home Office is under a duty to ensure that the best interests of a child are taken into account when making any immigration decision. Any private life application made under the seven year rule will invoke this duty and may be of particular importance for any

assessment of whether it would be reasonable for a child to leave the UK.

What is 'reasonable' in the context of a child being removed from the UK is a subject of much debate. The Home Office guidance provides information as to how a caseworker should consider best interests of a child in the context of private life cases. [5] The Home Office caseworker is therefore likely to consider the following when looking at an application under the seven year rule:

- Whether there would be a significant risk to the child's health
- Whether the child would be leaving the UK with their parents – the Home Office consider that it is generally in a child's best interests to remain with their parents and that it will generally be reasonable to expect a child to leave the UK with their parents, particularly if the parents have no right to remain in the UK
- The extent of wider family ties in the UK
- Whether the child is likely to be able to (re)integrate readily into life in another country (i.e. family or social ties, cultural ties, language)
- Any country specific information, including as contained in relevant country guidance
- Other specific factors raised by or on behalf of the child

Relevant cases

These are arguably harsher considerations than some of considerations highlighted in the case law relating to best interests. The Upper Tribunal considered best interests in the context of the seven year rule and found that:

- lengthy residence in a country can lead to development of social, cultural and educational ties that it would be inappropriate to disrupt, in the absence of compelling reason to the contrary (seven

years is considered such a period); and

- Seven years from age four is likely to be more significant to a child that the first seven years of life. [6]

For further information or guidance on the case law relating to best interests, please see the section on case law in our fact sheet on best interests, available at: www.coramchildrenslegalcentre.com/resources.

The Court of Appeal has looked at reasonableness in the context of the seven year rule – *MA (Parkistan) & Others, R (on the application of) v Upper Tribunal (IAC) & Another [2016] EWCA Civ 705* – and found that wider public interest considerations, such as the immigration history of the parents, were relevant to whether it was reasonable for a child to leave the UK and this was not blaming the child for the moral failings of his or her parents.

An application on the basis of private life - outside the rules

Although the Home Office considers Article 8 to be covered under the Immigration Rules, the Home Office guidance does acknowledge that there will be times where a negative decision under the Immigration Rules would still lead to a breach of Article 8. In those cases, the Home Office guidance states that they will consider whether there are any exceptional circumstances that would lead to leave outside of the Immigration rules. 'Exceptional circumstances' are interpreted by the Home Office as not simply unusual or unique, but rather where refusal would result in unjustifiably harsh consequences that refusal would not be proportionate. It is further noted that this is likely to be the case only rarely.

However, the case law on Article 8 establishes that if the rules are not met, an immigration judge must undertake a proportionality assessment when deciding the appeal.

Issues that may be relevant to a private life application that make interfering with rights under Article 8 disproportionate include:

- Family life and children
- Significant links and contributions to the community or organisations within the community;
- Medical issues, including mental health; and
- Home Office delay.

When working with a child or family making an application outside of the rules, you may be able to provide evidence to show that a private life has been established in the UK and reasons why it would be disproportionate to remove the family from the UK.

Making an application & legal representation

It is important that an individual receive quality legal advice before making such an application. The individual should provide as much information as possible to the solicitor or immigration adviser so as to ensure the advice they receive is accurate. There is currently no legal aid available for such applications.

An application on the basis of private life will normally be made on a specified form (currently FLR(FP) or FLR(HRO) for medical cases) with relevant fee – the correct fee and form should always be checked on the government website. An individual will also have to pay the Immigration Health Surcharge unless eligible for a fee waiver. For further information on fee waivers, please see our fact sheet at www.coramchildrenslegalcentre.com/resources. The Home Office will also consider private life arguments raised as part of an asylum claim or fresh claim for asylum. [7]

Length of leave to remain granted

A grant of private life within or outside of the Immigration Rules will normally be for 30 months (2.5 years) with a 10 year route to settlement. Therefore an individual will have to make a total of four leave to remain applications (including their initial application) before being eligible to make an application for settlement.

A grant of leave to remain under private life will be subject to a 'no recourse to public funds' (NRPF)

condition. However, if it is shown that someone is likely to be destitute should a NRPF condition be given to them, the Home Office may not make such a condition. Please see our fact sheet on NRPF conditions, available at: www.coramchildrenslegalcentre.com/resources, for further information.

With regard to leave to remain for children, it may be argued that it is in the best interests of a child, or the parent/carer of the child, to be granted a longer period of leave to remain or settlement. Please see our fact sheet on best interests and in particular, the section "*Best interests in applications for leave to remain and indefinite leave to remain*". The fact sheet is available at: www.coramchildrenslegalcentre.com/resources.

Applications for settlement on private life grounds

Previously there were two routes to 'settled status' (where you are granted indefinite leave to remain) on the grounds of long residence. An individual could apply for settlement (indefinite leave to remain) if they had completed either 10 years continuous and lawful residence; or 14 years of continuous residence (lawful, unlawful or a combination of both).

However, since the changes to the Immigration Rules in 2012, the rules governing applications for settlement under private life have been severely restricted. There is now only one route to settlement on long residence grounds under rule 276B – 10 years' continuous and lawful residence.

"Continuous and lawful" residence is defined in the Immigration Rules. [8] The rules state that an absence from the UK for less than six months does not break continuity of residence. There are other rules relating to continuous and lawful residence and it is always recommended that an individual should seek legal advice should they be worried about breaking their continuous residence.

When considering an application for settlement under long residence and private life, the Home Office will also consider the person's character, conduct and whether it is in the public interest for an individual to be granted settlement. They will also need to meet

the English language and life in the UK requirements and not be subject to refusal on the grounds of criminality.

An application for settlement under this route is currently made on the form SET(LR). [9] There is a fee for making a settlement application and the most recent fees should always be checked on the government website. [10] It is not possible to apply for a fee waiver for settlement applications, although it should be noted that the Immigration Health Surcharge does not apply to such applications.

NOTES

[1] Home Office, Part 7, Immigration Rules
<https://www.gov.uk/guidance/immigration-rules/immigration-rules-part-7-other-categories>

[2] Home Office, Guidance - Long Residence
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/488265/Long_Residence_v13.0_EXT.pdf

[3] Home Office, Rule 276ADE, Immigration Rules
<https://www.gov.uk/guidance/immigration-rules/immigration-rules-part-7-other-categories>

[4] Home Office, Rules S-LTR1.1-2.3, 3.1, Appendix FM, Immigration Rules
<https://www.gov.uk/guidance/immigration-rules/immigration-rules-appendix-fm-family-members>

[5] Home Office Guidance, Paragraph 11.2.4, Appendix FM 1.0 Family Life (as a Partner or Parent) and Private Life: 10 year routes
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/452912/Family_Life_as_a_Partner_or_Parent_and_Private_Life_-_10_year_routes_guidance_August_2015.pdf

[6] Azimi-Moayed and others (decisions affecting children; onward appeals) [2013] UKUT 00197 (IAC)
<https://tribunalsdecisions.service.gov.uk/utiac/2013-ukut-197>

[7] Home Office, Rule 276AO, Immigration Rules
<https://www.gov.uk/guidance/immigration-rules/immigration-rules-part-7-other-categories>

[8] Home Office, Rule 276A (a) & (b), Immigration Rules
<https://www.gov.uk/guidance/immigration-rules/immigration-rules-part-7-other-categories>

[9] Home Office, SET(LR) Form & Guidance Notes
<https://www.gov.uk/government/publications/application-to-settle-in-uk-form-setlr>

[10] Gov.uk website, Fees information webpage
<https://www.gov.uk/government/publications/visa-regulations-revised-table>

This fact sheet should not be used to give legal advice and is for information and guidance only. For advice on individual cases, assistance should be sought from an independent regulated legal adviser.

For further assistance contact our advice line. Call 0207 636 8505 or email mcp@coramclc.org.uk.