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General Grounds for Refusal – NHS Charges

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From 31 October 2011, the Immigration Rules were changed so that applications to come to or stay in the United Kingdom made on or after that date may be refused where the applicant has an outstanding debt owed to the National Health Service (NHS) for NHS treatment. This information sheet provides information about this change in the Rules.

Background

Further information about the general grounds for refusal in the Immigration Rules is provided by the March 2011 “General Grounds for Refusal” information sheet at <http://tinyurl.com/72uoq4n>.

The Immigration Rules contain, in Part 9, various general grounds for refusal. These are grounds (reasons) that generally apply whatever the type of application (to enter or remain in the UK) that is being made. Some of the grounds are mandatory (i.e. if the ground applies to a particular application, that application must be refused). Other grounds are discretionary (i.e. if the ground applies to a particular application, it may be refused). Although the Rules do not require that where a discretionary ground applies the application must be refused, the Rules state that in such cases an application should “normally” be refused.

On 10 October 2011, the Minister for Immigration, Damian Green MP, made a written statement to the House of Commons about changes to the Immigration Rules. Included in that statement was the following:

“On 18 March 2011, I announced the Government’s response to the 2010 consultation on refusing entry [or] stay to NHS debtors and signalled my intention to lay a new rules change in respect of outstanding NHS charges. This will deter overseas visitors from misusing the NHS and encourage overseas visitors to meet their obligations to pay for the NHS services that they use. The UK Border Agency will continue to work closely with the Department of Health on a range of measures to prevent health tourism.”

That statement, and a UK Border Agency news item, are available at:

<http://www.ind.homeoffice.gov.uk/sitecontent/newsarticles/2011/october/19health-tourists-nhs>

The new Rule on NHS charges

The following paragraph was inserted into the Immigration Rules to apply to applications made on or after 31 October 2011:

“where one of more relevant NHS body has notified the Secretary of State that the person seeking [(i) entry or (ii) leave to enter/leave to remain or (iii) a variation of leave to enter or remain] has failed to pay a charge or charges with a total value of at least £1000 in accordance with the relevant NHS regulations on charges to overseas visitors.”

The Immigration Rules state that where this paragraph applies an application should “normally” be refused.

The Immigration Rules define what is meant in this paragraph by the terms “relevant NHS body” and “relevant NHS regulations” (in the general interpretation section of the Rules – paragraph 6). Essentially, the paragraph applies where the National Health Service (NHS) in any part of the United Kingdom notifies the UK Border Agency of any unpaid charges for NHS treatment of at least £1000, provided it was lawful for the NHS to have charged for the treatment. More information on when NHS charges can be made is provided by the “Access to Healthcare” information sheets of March 2011 (<http://tinyurl.com/7beowbh>) and April 2009 (<http://tinyurl.com/77tr5gp>).

The paragraph will not apply in any of the following situations:

- Where someone has received free NHS treatment, to which he or she was not entitled, but has not been charged for that treatment.
- Where someone has been charged for NHS treatment, which charge or charges he or she has not paid, but the NHS has not notified the UK Border Agency of the unpaid charges
- Where someone has been charged for NHS treatment, but the charge or charges which remain unpaid amount to less than £1000
- Where the application to come to or stay in the UK being considered by the UK Border Agency was made before 31 October 2011

The paragraph does not apply to applications made outside the Immigration Rules (e.g. applications made on the basis of a person’s private and family life – see the August 2008 “Article 8” information sheet at <http://tinyurl.com/6skjen6>). However, unpaid NHS charges may still be relevant to how such applications are decided. In an Article 8 case, unpaid charges might be one factor considered among several others in assessing whether it would be reasonable (or proportionate) to refuse the application.

Further information

In his written statement (see above), Damian Green MP referred to ‘health tourism’. However, in September 2011, the HIV and AIDS in the UK Select Committee published its first report (HL Paper 188). The Committee found that “...*there seems to be little real evidence of ‘health tourism’*” (paragraph 254). The Committee’s report is available at:
<http://www.publications.parliament.uk/pa/ld201012/ldselect/ldaids/188/188.pdf>

In March 2007, the Joint Committee on Human Rights had also considered this issue. In its report on *Treatment of Asylum Seekers* (HL Paper 81/HC 60), the Committee said: “*We note that the Government has not produced any evidence to demonstrate the extent of what it describes as ‘health tourism’ in the UK.*” The Joint Committee’s report is available at:
<http://www.publications.parliament.uk/pa/jt200607/jtselect/jtrights/81/81i.pdf>

More than four years later, in December 2011, Baroness Northover, Minister of State, responding to matters raised by members of the HIV and AIDS in the UK Select Committee, said “...*there is currently no significant evidence of health tourism in relation to HIV.*”