

ILPA information sheet

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Long Residence Rules 2

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On 9 July 2012, the Immigration Rules (“the Rules”) changed. More information about these changes is provided by the “Family Migration – Change to Immigration Rules” information sheets [<http://tinyurl.com/blz7zg6>] and [<http://tinyurl.com/bluvmew>]. The changes included changes to the Rules relating to long residence applications – i.e. applications for leave to remain or settlement on the basis of a person’s long residence in the UK. This information sheet provides information regarding long residence applications. The July 2008 “Long Residence Rules” information sheet [<http://tinyurl.com/bud8b2m>] is no longer up to date.

Applications made before 9 July 2012

Long residence applications made before 9 July 2012, which remain outstanding, will continue to be considered under the Rules before that date. However, new paragraph A279 of the Rules applies some of the new requirements (relating to criminal convictions and conduct) to these outstanding applications.

Applications made on or after 9 July 2012

From 9 July 2012:

- It continues to be possible for someone to apply for leave to remain in the UK on the basis that he or she has been in the UK lawfully for 10 years or more. However, there are some changes affecting these applications (see below).
- It is no longer possible for someone to apply for leave to remain in the UK on the basis that he or she has been in the UK unlawfully for 14 years or more. However, new paragraph 276ADE introduces new provisions which may enable some people who have been in the UK for many years to apply for leave to remain (see below).

Long residence (10 years lawful residence)

Someone who has lived in the UK for a period of 10 years may apply for indefinite leave to remain if his or her presence in the UK over this time has been lawful. Unless one of the following applies, indefinite leave to remain will normally be granted:

- the 10 years period has been broken (see below)
- there are public interest reasons to refuse the application (see below)
- the individual fails to demonstrate sufficient knowledge of the English language and life in the UK
- the individual has any unspent criminal conviction (see below)

Lawful residence means that the person must either have had leave to enter or remain in the UK

over the course of this 10 years period, or have been exempt from immigration control. Time spent on temporary admission cannot count towards the 10 years period, unless the period of time on temporary admission is immediately followed by a grant of leave to enter or remain. Some breaks in the period of lawful residence in the UK may be discounted, but a period of more than six months as an overstayer (or any period of overstaying following which a person leaves the UK) will not normally be discounted. A person who leaves the UK after having lived here lawfully for 10 years or more, may apply for indefinite leave to remain on the basis of that 10 years period if he or she later returns to the UK.

If a person has any unspent criminal conviction, he or she will not be granted indefinite leave to remain on the basis of 10 years lawful residence. He or she may be granted leave to remain for no more than two years, and may apply for further leave at the end of that period. However, criminal convictions may be a reason why a person's application is refused with no grant of leave to remain.

Long residence (some or all of which has not been lawful)

Paragraph 276ADE of the Rules indicates that leave to remain may be granted to a long residence applicant if he or she has lived continuously in the UK:

- for at least 20 years; or
- for at least 7 years (and the applicant is under 18 years of age); or
- for at least half of his life (and the applicant is aged between 18 and 25 years); or
- for less than 20 years (and the applicant has no ties to the country to which he or she would have to go if required to leave the UK).

In calculating the period of continuous residence, any period in prison is to be discounted. A successful application under paragraph 276ADE will lead to a grant of leave to remain for no more than 30 months. A person granted leave to remain under this paragraph may apply for further leave if he or she continues to meet the requirements of this paragraph. Such a person may apply for indefinite leave to remain after 10 years. At that time he or she will still have to meet the requirements of paragraph 276ADE. If applied strictly, these rules will have some strange results. A child who has lived in the UK for seven years immediately before his or her 18th birthday may be granted leave to remain for 30 months (2½ years). If applying at the end of that period, he or she will now be a person aged between 18 and 25 years. He or she will have lived in the UK for about 9½ years. His or her age will be about 20½ years. He or she will need to meet a requirement of having lived in the UK for a little over 10 years. The rule would suggest that this person will be refused any application for further leave after the first grant of 30 months. The threshold in paragraph 276ADE applying to a person aged under 25 years and a person aged 25 years or over is similarly capable of producing perverse results. The only way by which these results could be avoided under paragraph 276ADE is if the person is without any ties to his or her country of origin (or other country to which the UK Border Agency proposes to remove him or her).

Discretionary leave to remain

Although the UK Border Agency has indicated it will normally no longer grant discretionary leave, ILPA does not understand there to be any intention to change the policy to grant discretionary leave to separated children in the circumstances explained in the May 2012 "Discretionary Leave & Separated Children" information sheet [<http://tinyurl.com/c8vamq9>]. However, it is not clear to ILPA what is the intention of the UK Border Agency if a separated child granted discretionary leave under that policy applies for further leave to remain when that period of discretionary leave is coming to an end.

UK Border Agency guidance

UK Border Agency guidance on the long residence rules is available at:

<http://www.ind.homeoffice.gov.uk/sitecontent/documents/policyandlaw/modernised/other-categories/long-residence.pdf?view=Binary>