



## Immigration Rules – General Grounds for Refusal

14 February 2008

The Immigration Rules set out the legal framework for considering whether a person may obtain permission to enter or remain in the UK. Part 9 of the Rules sets out general grounds for refusing the applications of those seeking to come to the UK (enter) or stay in the UK (remain).

There are important changes being made to these general grounds for refusal. This information sheet explains those changes. There are other important changes being made to the Immigration Rules, but this information sheet does not deal with those.

### General grounds for refusal

These are grounds (or reasons) that apply whatever the type of application (to enter or remain in the UK) that is being made. For example, someone hoping to come to the UK in order to work may have his or her application refused on these grounds in just the same way as someone else hoping to come to join his or her partner. Similarly, someone hoping to continue studies in the UK may have his or her application to stay refused on these grounds in just the same way as someone who hopes to stay here having got married.

Some of the grounds are mandatory – i.e. if the ground applies, the application must be refused. Some of the grounds are discretionary – i.e. even if the ground applies, the application may still be granted.

### Changes to the general grounds for refusal

Some of the changes being made will come into force on 29 February 2008. Others come into force on 1 April 2008.

The changes being made will mean that in certain circumstances an application for permission to enter or remain in the UK must be refused. Currently, although in the same or similar circumstances the application can be refused, it is not the case that the application must be refused. In many instances, applications are not refused; and this is often for very good reasons.

Some circumstances that are relevant to these changes relate to the particular application being made. Other circumstances relate to past conduct by the applicant.

### Changes that relate to the application for permission to enter or remain in the UK

These changes are to come into force on 29 February 2008. The types of conduct that are relevant for these changes are:

- making false statements with the application
- submitting false documents with the application
- failing to disclose relevant facts with the application

When the changes come into force, any application for permission to enter or remain in the UK must be refused if any of these things have been done. There will be no discretion and none of the following will make any difference:

- where the applicant believed and had good reason to believe that the statement was true or the document was genuine and valid

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- where the applicant did not know that the statement had been made or the document submitted
- where the applicant did not understand that the relevant fact needed to be disclosed or made a completely innocent mistake in not disclosing it
- where the false document or statement was totally irrelevant to the application and not in any way material

These changes will affect applications made by adults and children in the same way. However innocent of any wrongdoing the applicant may be, it will not matter. Applicants who instruct agents to make their applications will have their applications refused even though it was the agent, without their knowledge, who submitted the false document or made the false statement. Similarly, where the application includes documentary evidence from a third party (e.g. an employer, an educational institution or a financial institution), any error by that third party may lead to the application being rejected regardless of the innocence of the applicant.

#### **Changes that relate to past conduct by the applicant**

Changes relating to this type of conduct are to come into force on 1 April 2008. The types of past conduct that are relevant for these changes are:

- overstaying (i.e. the person has stayed in the UK after the time for which he or she had been granted permission to be in the UK has passed)
- breaching an immigration condition (e.g. the person has been working in the UK when his or her permission to be in the UK was on condition that he or she must not work; or the person failed to report to an immigration officer when required to do so as a condition of his or her leave to enter or remain)
- entering the UK illegally (i.e. the person did not have permission to enter the UK at the time he or she entered)
- obtaining permission to enter or remain in the UK by using deception

When the changes come into force, the effect will be that any applicant, who has previously done any of these things, will have his or her application for permission to enter the UK refused if it is made within certain fixed periods. The only exception relates to overstaying. If the applicant had overstayed for no more than 28 days, and then left the UK voluntarily and at his or her own expense, this will not be a reason to refuse his or her application.

Otherwise, where a person's past conduct falls into one of the categories (set out above) any subsequent applications from that person for permission to re-enter the UK will be refused if made within

- 10 years of when the applicant obtained permission to enter or remain in the UK by using deception
- 12 months of when the applicant left the UK voluntarily at his or her own expense
- 5 years of when the applicant left the UK voluntarily but, directly or indirectly, the UK state paid for his or her departure
- 10 years of when the applicant was removed or deported from the UK .

These changes will affect applications made by adults and children in the same way. They will also affect the adult or child regardless of the circumstances in which he or she came to the UK. Thus an asylum-seeker, who was forced to use an illegal or deceitful method of entry into the UK in order to be able to escape their home country will be caught by these provisions. It will not even matter that the asylum claim was unsuccessful only because the real risk to the individual had passed by the time the claim was ultimately decided. Similarly, a trafficking victim, who was forced to use an illegal method of entry into the UK will be caught by these provisions.