



Immigration Rules – Concessions on General Grounds for Refusal

23rd May 2008

On 1 April 2008, the Immigration Rules changed. From that date, the Rules have included mandatory bans on returning to the UK for people who have breached UK immigration law in certain ways. More information on these re-entry bans is available from the “Immigration Rules – General Grounds for Refusal” information sheet.

Since these changes were first published, the Government has made important concessions. This information sheet explains the concessions that have been made; and provides some further information about how the re-entry bans will be applied.

Time limited exemption from re-entry bans

Lord Bassam of Brighton, Minister of State, announced a concession in a debate in the House of Lords on 17 March 2008. This concession is intended to encourage anyone currently in the UK in breach of immigration law to leave voluntarily.

The concession means that anyone who was in the UK on 17 March 2008, and leaves the UK voluntarily before 1 October 2008, will not face a mandatory re-entry ban. However, please see the paragraph below under the heading “General considerations”.

Joining family who are settled in the UK

Liam Byrne MP, Minister for Borders and Immigration, announced this concession in a debate in the House of Commons on 13 May 2008.

This concession means that anyone who is applying under the Rules to join a family member who is settled in the UK will not face a mandatory refusal because of a re-entry ban. This covers:

- those applying to join a spouse, civil partner, unmarried or same-sex partner
- fiancées or proposed civil partners
- parents, grandparents or other dependent relatives
- those seeking to exercise access rights to a child (i.e. rights granted by a UK court)

However, please see the paragraph below under the heading “General considerations”.

Children

In the same debate in the House of Commons, the Minister announced a concession for children.

This concession means that nobody will face a re-entry ban because of breaches of immigration law that he or she committed while under 18 years of age. However, please see the paragraph below under the heading “General considerations”.

Victims of trafficking

In the same debate in the House of Commons, the Minister announced that a concession would be introduced for victims of trafficking. He said this concession would be introduced later in the year when the UK ratifies the Council of Europe Convention on Action against Trafficking in Human Beings. When this concession is introduced, it seems likely to work in the same way as the concession for children.

ILPA information service

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Information sheets provide general information only.

ILPA members listed in the directory at www.ilpa.org.uk provide legal advice on individual cases. ILPA does not.

In the meantime, the UK Visas Entry Clearance Guidance includes a concession relating to victims of trafficking. It means that a re-entry ban will not be applied to someone whom the Home Office has accepted to be a victim of trafficking.

People granted leave to enter or remain in the UK

In a letter to ILPA of 4 April 2008, the Minister has confirmed that anyone who is granted leave to enter or remain in the UK, will not face a re-entry ban for any breach of immigration law before they were granted leave to enter or remain in the UK – provided that the leave was granted in knowledge of the breach. If someone breaches immigration law after having been granted leave to enter or remain, he or she may face a ban. (The Minister’s letter is available in the “latest news” section of the ILPA website.)

However, please see the paragraph below under the heading “General considerations”.

General considerations

Just because someone is exempt from the new re-entry bans does not mean he or she will be guaranteed a right to return to the UK.

Even if someone is exempted from a re-entry ban because of a concession, he or she may be refused an application to return to the UK if:

- he or she does not satisfy other requirements of the Immigration Rules
- if he or she has “contrived in a significant way to frustrate those rules”

The UK Visas Entry Clearance Guidance gives some further explanation of what is meant by “contrived in a significant way to frustrate those rules”. This means that significant breaches of UK immigration law may still lead to a refusal of an application to return to the UK even though the individual is exempt from a re-entry ban.

Human rights

Even where a re-entry ban applies that would prevent someone from returning to the UK, this does not prevent that person from making an application to come to the UK on the basis that refusing their application would breach their human rights.

Importance of legal advice

This information sheet provides no more than a summary of the key concessions that have been given over the past two months. The information provided here cannot replace the need for expert immigration advice in any individual case, which may be affected by the changes to the Immigration Rules or any of the concessions.

An immigration adviser may wish to check:

- The Minister’s response to the debate in the House of Lords on 17 March 2008 which is available at <http://www.publications.parliament.uk/pa/ld200708/ldhansrd/text/80317-0014.htm#0803183000003>
- The Minister’s response to the debate in the House of Commons on 13 May 2008 which is available at <http://www.publications.parliament.uk/pa/cm200708/cmhansrd/cm080513/debtext/80513-0028.htm#0805147000002>
- The Minister’s letter to ILPA of 4 April 2008 which is available in the “latest news” section at www.ilpa.org.uk
- Chapter 26.17 of the UK Visas Entry Clearance Guidance which is available at <http://www.ukvisas.gov.uk/en/ecg/chapter26/#point%20seventeen>