

# **ILPA** information sheet

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## **General Grounds for Refusal**

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The Immigration Rules set out the legal framework for considering whether a person may obtain permission (leave) 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 (enter) the UK or stay (remain) in the UK.

In 2008, the last Government made significant changes to Part 9 of the Rules. These changes were explained in three information sheets on “Immigration Rules – general grounds” in February, March and May 2008. The current Government is now making a further change to Part 9. This information sheet brings together information in the previous information sheets and information about the latest change – which is to take effect for all decisions made on or after 6 April 2011.

### **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 to work may have his or her application refused on these grounds in just the same way as someone else hoping to come to the UK to study. However, there are some important differences for people seeking to come to or stay in the UK to be with family members (see below).

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. if the ground applies, the application may or may not be refused. Not all of the general grounds for refusal are explained here. The information here is mostly concerned with what are sometimes referred to as “re-entry bans”, which provide one reason why some applications are refused on mandatory grounds.

### **Re-entry bans**

The general grounds for refusal include grounds that establish re-entry bans – i.e. that someone must be refused permission to return to the UK for a specified period of time. In fact, while the term “re-entry bans” is used, the general grounds include a provision banning certain people from coming to the UK who have not previously entered the country. The scheme of the re-entry bans in the Immigration Rules is essentially set out in three particular paragraphs of the Rules – 320(7A), 320(7B) and 320(7C). These are explained below.

### **Paragraph 320(7A)**

This relates to applications to come to the UK. (Similar provisions are made in other paragraphs for applications to stay in the UK.) If someone makes a false assertion in his or her application, includes a false document or fails to mention something that is relevant to the application, that application must be refused.

### **Paragraph 320(7B)**

This relates to applications to come to the UK, and sets out the re-entry bans. It sets out types of behaviour that will lead to a re-entry ban, and then sets out how long the ban is to last. The types of behaviour that will lead to a re-entry ban are:

- using deception in an application to come to or stay in the UK
- overstaying (that is staying in the UK after someone's permission to be in the UK has come to an end) for more than 28 days
- breaching any condition of permission to be in the UK (e.g. working or claiming benefits when not permitted to)
- illegally entering the UK

The length of a re-entry ban will be the longer period of the following:

- if the person left the UK voluntarily at his or her own expense, **12 months** from when he or she left the UK
- if the person left the UK voluntarily but at some cost to the UK (e.g. made an assisted voluntary departure), and did so within 6 months of having been given notice of the UK Border Agency's intention to remove him or her or within 6 months of exhausting his or her appeal rights, **2 years** from the date of his or her departure from the UK\*
- if the person left the UK voluntarily but at some cost to the UK (e.g. made an assisted voluntary departure), but not within either of the 6 months periods referred to above, **5 years** from the date of his or her departure from the UK
- if the person used deception, **10 years** from the date of that deception

*\* this is the new provision being introduced to the Immigration Rules and will apply to applications decided on or after 6 April 2011*

### **Paragraph 320(7C)**

This sets out exceptions to paragraph 320(7B). If the exceptions apply, paragraph 320(7B) does not apply – i.e. the person or application is not subject to the re-entry bans. The exceptions are:

- many applications for permission to come to the UK to join family members are not subject to the re-entry bans
- where the person was under the age of 18 years when he or she breached UK immigration laws, he or she will not be subject to the re-entry bans (unless he or she has breached UK immigration laws since turning 18)

### **Other exceptions**

Ministers have also announced concessions outside the Rules so that the following should not be subjected to the re-entry bans:

- someone who has been accepted by the UK Border Agency to be a victim of trafficking
- someone who was in the UK after 17 March 2008 and left the UK voluntarily before 1 October 2008

### **Paragraph 320(11)**

This relates to applications to come to the UK. It is one of the discretionary general grounds for refusal. Someone who has previously breached UK immigration laws, but is not subject to the re-entry bans because of any of the exceptions listed above, may nonetheless be refused permission to come to the UK because of that previous breach of UK immigration laws. This will depend on how serious that previous breach was.