

CHAPTER 1
SECTION 3

ANNEX K

RETURNING RESIDENTS

EXCEPTIONS TO THE TWO YEAR RULE

1. INTRODUCTION

Paragraph 18 of HC395 contains the requirement that, in order to qualify as a returning resident, a person must return to the United Kingdom within 2 years of embarkation. Paragraph 19 of HC395 makes provision for a person who has been away for *more* than 2 years to be admitted if his ties to this country merit it. Paragraph 2 (below) provides advice about the consideration of cases where Paragraph 19 of HC395 may apply.

Paragraph 3 below provides guidance about cases where the spouses of serving members of HM Forces have been absent from the United Kingdom for over 2 years.

2. FACTORS TO BE CONSIDERED IN CASES WHERE PARAGRAPH 19 OF HC 395 MAY APPLY

The factors that should be considered in assessing whether a person comes within Paragraph 19 are set out below:

- * the length of his original residence here;
- * the time the applicant has been outside the United Kingdom;
- * the reason for the delay beyond the 2 years - was it through his own wish or no fault of his own? Could he reasonably have been expected to return within 2 years?
- * why did he go abroad when he did and what were his intentions?
- * the nature of his family ties here - how close are they, and to what extent has he maintained them in his absence?
- * whether he has a home in the United Kingdom and, if admitted, would resume his residency.

The longer a person has remained outside the United Kingdom over 2 years, the more difficult it will be for him to qualify for admission under the discretion contained in Paragraph 19.

2.1 Other circumstances to be considered

Other more specific circumstances which might apply in favour of an individual are:

- * travel and service abroad with a particular employer prior to returning with him;
- * service abroad for the United Kingdom Government, as an employee of a quasi/government body, a British company or a United Nations organisation;
- * employment abroad in the public service of a friendly country by a person who could *not* reasonably be expected to settle in that country permanently;
- * a prolonged period of study abroad by a person who wished to rejoin his family here at the end of his studies;
- * prolonged medical treatment abroad of a kind not available here;
- * whether the person contacted a post abroad within 2 years to express his future intention to return to the United Kingdom.

3. ABSENCE FROM THE UNITED KINGDOM FOR MORE THAN 2 YEARS IN THE CASE OF SPOUSES OF SERVING MEMBERS OF HM FORCES

A member of HM Forces based in the United Kingdom but serving overseas is to be regarded as present and settled in the United Kingdom all of the time and thus should be considered as not being absent from British territory.

It follows that where such a person is *accompanied* on an overseas tour of duty of in excess of two years duration, and the spouse has ILE or ILR, the spouse should not be regarded as having been absent from the United Kingdom and will qualify for re-entry as a returning resident. The spouse will not require an entry clearance or in the case of a visa national, a visa for this purpose.

Where, however, such a spouse *travels independently*, and is absent from the United Kingdom (eg; on private visits to family) for more than two years, it will be necessary for that person to apply for entry clearance to return to the United Kingdom as the spouse of a serving member of HM Forces.