

IMMIGRATION DIRECTORATE INSTRUCTIONS (February 2009)

CHAPTER 5

SECTION 2 - REPRESENTATIVES OF OVERSEAS NEWSPAPERS, NEWS AGENCIES AND BROADCASTING ORGANISATIONS

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Caseworkers **must** refer to **all** relevant parts of this guidance, including the immigration rules, when considering applications.

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1. INTRODUCTION

On 27 November 2008 Paragraphs 136 - 141 of the immigration rules were deleted. These paragraphs provided for the admission of correspondents and representatives employed by overseas newspapers, news agencies and broadcasting organisations assigned to the United Kingdom on a long-term full-time salaried basis. The intention was that such applicants would apply under Tier 2 of the new Points-Based System.

Following concerns that media representatives without a UK-based sponsor may be unable to apply under the new system, this provision has now been reinstated as a concession outside the immigration rules. This concession will be reviewed later in 2009.

Under this concession, applicants must have been engaged outside the United Kingdom and be directly involved in newsgathering for publication or broadcast abroad. Employees other than journalists may be considered, for example, producers, news cameramen and front of camera personnel. Secretaries and other administrative staff, however, must apply under Tier 2 of the Points-Based System (Part 6A of the immigration rules).

Applications should be considered under the category for which they have applied. Those who apply under Tier 2 of the Points-Based System should be

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considered solely against the Tier 2 criteria. Those who apply under this concession on the FLR(O) form should be considered solely against the criteria for the previous category, as set out in this IDI.

Staff coming for six months or less may do so as business visitors, provided that they qualify under Part 2 of the immigration rules.

This category is only for representatives who are being posted on a long-term assignment i.e. for more than six months.

Entry clearance is mandatory for applicants in this category.

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2. PREVIOUS IMMIGRATION RULES

Paragraphs 136 – 141, which were deleted from the immigration rules on 27 November, are set out below. Although these paragraphs are no longer part of the immigration rules, they should continue to be applied to this category.

Requirements for leave to enter as a representative of an overseas newspaper, news agency or broadcasting organisation

136. The requirements to be met by a person seeking leave to enter the United Kingdom as a representative of an overseas newspaper, news agency or broadcasting organisation are that he:

- (i) has been engaged by that organisation outside the United Kingdom and is being posted to the United Kingdom on a long term assignment as a representative; and
- (ii) intends to work full time as a representative of that overseas newspaper, news agency or broadcasting organisation; and
- (iii) does not intend to take employment except within the terms of this paragraph; and
- (iv) can maintain and accommodate himself and any dependants adequately without recourse to public funds; and
- (v) holds a valid United Kingdom entry clearance for entry in this capacity.

Leave to enter as a representative of an overseas newspaper, newsagency or broadcasting organisation

137. A person seeking leave to enter the United Kingdom as a representative of an overseas newspaper, news agency or broadcasting organisation may be admitted for a period not exceeding 2 years, provided he is able to produce to the Immigration Officer, on arrival, a valid United Kingdom entry clearance for entry in this capacity.

Refusal of leave to enter as a representative of an overseas newspaper, news agency or broadcasting organisation

138. Leave to enter as a representative of an overseas newspaper, news agency or broadcasting organisation is to be refused if a valid United Kingdom entry clearance for entry in this capacity is not produced to the Immigration Officer on arrival.

Requirements for an extension of stay as a representative of an overseas newspaper, news agency or broadcasting organisation

139. The requirements for an extension of stay as a representative of an overseas newspaper, news agency or broadcasting organisation are that the applicant:

- (i) entered the United Kingdom with a valid United Kingdom entry clearance as a representative of an overseas newspaper, news agency or broadcasting organisation; and
- (ii) is still engaged in the employment for which his entry clearance was granted; and
- (iii) is still required for the employment in question, as certified by his employer; and
- (iv) meets the requirements of paragraph 136 (ii)-(iv).

Extension of stay as a representative of an overseas newspaper, news agency or broadcasting organisation

140. An extension of stay as a representative of an overseas newspaper, news agency or broadcasting organisation may be granted for a period not exceeding 3 years provided the Secretary of State is satisfied that each of the requirements of paragraph 139 is met.

Refusal of extension of stay as a representative of an overseas newspaper, news agency or broadcasting organisation

141. An extension of stay as a representative of an overseas newspaper, news agency or broadcasting organisation is to be refused if the Secretary of State is not satisfied that each of the requirements of paragraph 139 is met.

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3. GRANT PERIODS

Leave can be granted when **all** the requirements of paragraph 136 (leave to enter) or 139 (extension of stay) extracted from the old immigration rules and set out above are met. Provided that none of the general grounds for refusal

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set out in Part 9 of the current immigration rules apply, leave may be granted as set out in the table below.

If a representative of an overseas newspaper, news agency or broadcasting organisation has completed five years in the United Kingdom in this category and applies for leave for a **limited** period, this should **not** be treated as an application for settlement. (See Chapter 5, Section 1, Annex F for further information.)

Leave should be granted on Code 4.

Case workers should read Part 10 of the immigration rules for information regarding the requirement to register with the police, for applicants who are being granted leave to enter for longer than six months or leave to remain which will mean their stay in the United Kingdom will exceed six months.

Applicants seeking to enter the United Kingdom with existing entry clearance should be admitted unless there are grounds to cancel their leave to enter under paragraph 321 of the immigration rules.

Note: Decision 1/80 of the Association Council established by the ECAA with Turkey confers certain employment rights on Turkish Nationals **who are already working lawfully in the United Kingdom**. See Chapter 5 section 10: "Turkish Employed applications" for further information

Stage	Applicant	Grant of Leave
Entry Clearance	First application	Two years
After Entry	Has valid leave as a representative of an overseas newspaper, news agency or broadcasting organisation	Up to a further three years

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4. INTENTION TO LEAVE THE UNITED KINGDOM

Leave granted as a representative of an overseas newspaper, news agency or broadcasting organisation **leads to settlement**. Therefore there is no requirement for those granted leave under this category to state an intention to leave the United Kingdom.

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5. SWITCHING

Applications for leave to remain as the representative of an overseas newspaper, news agency or broadcasting organisation from an applicant who entered the United Kingdom in another capacity should be refused.

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Applicants who are already here in this capacity and apply to change employers will not be able to meet the requirement that they are working for the same organisation. Therefore such applications should also be refused.

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6. REFUSAL GUIDANCE – ENTRY CLEARANCE

This guidance and the relevant immigration rules **must** be referred to when considering refusing entry clearance. Entry clearance should be refused if **any** of the requirements of paragraph 321 of HC395 **are not** met.

Paragraph 320(5) of the immigration rules sets out the general grounds on which entry clearance can be refused. Further guidance on refusing entry clearance can be found in Chapter 9, Section 2.

Examples of refusal wordings are given below. Please note that this is **not an exhaustive list** of all possible reasons for refusal.

"You have applied for entry clearance to the United Kingdom as a representative of ..., an overseas [newspaper/news agency/ broadcasting organisation], ..."

Reason and paragraph	Wording
Application not supported by organisation Paragraph 136(i) of the old immigration rules	"... but [? in view of ...] the Secretary of State is not satisfied that you have been engaged by that organisation outside the United Kingdom and are being posted to the United Kingdom on a long-term assignment as a representative."
Not already employed by the organisation outside the United Kingdom Paragraph 136(i) of the old immigration rules	"... but [? in view of ...] the Secretary of State is not satisfied that you have been engaged by that organisation outside the United Kingdom."
Not being posted on a long-term assignment as a representative Paragraph 136(i) of the old immigration rules	"... but [? in view of ...] the Secretary of State is not satisfied that you are being posted to the United Kingdom on a long-term assignment as a representative."
Intention to work only part-time Paragraph 136(ii) of the old immigration rules	"... but [? in view of ...] the Secretary of State is not satisfied that you intend to work full-time as a representative of that overseas [newspaper/news agency/broadcasting organisation]."

Other employment Paragraph 136(iii) of the old immigration rules	"... but [? in view of ...] the Secretary of State is not satisfied that you do not intend to take employment other than as a representative of that overseas [newspaper/news agency/ broadcasting organisation]."
Maintenance and accommodation Paragraph 136(iv) of the old immigration rules	"... but [? in view of ...] the Secretary of State is not satisfied that you can maintain and accommodate yourself and any dependants adequately without recourse to public funds."

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7. REFUSAL GUIDANCE – ON ENTRY

Entry should be refused if **any** of the requirements of paragraph 138 of HC395 **are not** met.

Where a **non-visa national** seeks entry in this capacity without a valid United Kingdom entry clearance issued for this purpose, and no compassionate circumstances exist which justify exceptionally granting leave outside the immigration rules, he should be refused entry under Paragraph 138 of HC 395.

A **visa national** seeking entry without a valid United Kingdom visa falls to be refused under Paragraph 320(5). See Chapter 9, Section 2.

If a passenger seeking entry in this capacity has leave to enter for this purpose, cancellation may only be considered under paragraph 321 of HC395. This will include cases where leave to enter was obtained as a result of false information or failure to disclose material facts, or when circumstances have changed since the leave was granted. It also includes cases where refusal is justified on medical grounds or on the grounds that exclusion would be conducive to the public good.

If cancellation of leave is being considered, Immigration Officers **must** refer to the relevant paragraphs of Chapter 9 Section 3A.

Before refusal of a passenger returning to the United Kingdom from a temporary absence abroad, within a period for which they were previously given leave, reference **must** be made to Chapter 1, Section 9, "Continuing leave and entry clearance as leave to enter".

Examples of refusal wordings are given below. Please note that this is **not an exhaustive list** of all possible reasons for refusal.

"You have asked for leave to enter the United Kingdom as a representative of (name of organisation) ..."

Reason and paragraph	Wording
No entry clearance - non-visa national Paragraph 138 of the old immigration rules	"... but under the immigration rules you are required to have a valid entry clearance for this purpose and you have no such entry clearance."
No entry clearance - visa national. Paragraph 320(5) of the current immigration rules	"... but under the immigration rules you are required to produce a passport or other identity document endorsed with a valid and current United Kingdom entry clearance issued for the purpose for which entry is sought, and you have no such entry clearance."

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8. REFUSAL GUIDANCE – EXTENSION OF STAY

Extensions of stay should be refused if **any** of the requirements of paragraphs 139 and/or 136 (ii-iv) extracted from the old immigration rules and set out earlier in this IDI **are not** met.

Paragraph 322 of the current immigration rules sets out general grounds for refusing any application for leave to remain. This includes cases where the applicant has made false declarations to obtain their previous period of leave or has failed to comply with the conditions of their previous period of leave. Where refusal is being considered for any of these reasons, case workers **must** refer to paragraph 322 of the immigration rules and Chapter 9, Section 4 of these instructions.

Chapter 9, Section 1 “Adverse decisions - general guidance” gives important advice about the decision-making process and should be consulted whenever refusal is being considered.

Examples of refusal wordings are given below. Please note that this is **not an exhaustive list** of all possible reasons for refusal.

"You have applied for leave to remain in the United Kingdom as a representative of ..., an overseas [newspaper/news agency/ broadcasting organisation], ..."

Reason and paragraph	Wording
No switching Paragraph 141 with reference to 139(i) of the old immigration rules	"... but the Secretary of State is not satisfied that you entered the United Kingdom with a valid United Kingdom entry clearance as a representative of an overseas newspaper, news agency or broadcasting organisation."
No longer engaged in	"... but [? in view of ...] the Secretary of State is

<p>employment for which EC granted</p> <p>Paragraph 141 with reference to 139(ii) of the old immigration rules</p>	<p>not satisfied that you are still engaged in the employment for which your entry clearance was granted."</p>
<p>No longer required for the employment in question</p> <p>Paragraph 141 with reference to 139(iii) of the old immigration rules</p>	<p>"... but [? in view of ...] the Secretary of State is not satisfied that your employer has certified that you are still required for the employment in question."</p>
<p>Intention to work only part-time</p> <p>Paragraph 141 with reference to 139(iv) and 136(ii) of the old immigration rules</p>	<p>"... but [? in view of ...] the Secretary of State is not satisfied that you intend to work full-time as a representative of that overseas [newspaper/news agency/broadcasting organisation]."</p>
<p>Other employment</p> <p>Paragraph 141 with reference to 139(iv) and 136(iii) of the old immigration rules</p>	<p>"... but [? in view of ...] the Secretary of State is not satisfied that you do not intend to take employment other than as a representative of that overseas [newspaper/news agency/ broadcasting organisation]."</p>
<p>Maintenance and accommodation</p> <p>Paragraph 141 with reference to 139(iv) and 136(iv) of the old immigration rules</p>	<p>"... but [? in view of ...] the Secretary of State is not satisfied that you will be able to maintain and accommodate yourself [and your dependants] adequately without recourse to public funds."</p>

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9. SETTLEMENT

Paragraphs 142 and 143 of the immigration rules remain in effect, and must be applied to applicants with leave under this concession who apply for settlement. These paragraphs refer to paragraph 139 extracted from the old immigration rules and set out earlier in this IDI

In considering applications for indefinite leave in this capacity, caseworkers must be satisfied that the applicant:

- (i) has spent a **continuous** period of five years here in this capacity;
- (ii) has produced a letter from his employers confirming that his services are still required;
- (iii) has met the requirements of Paragraph 139 throughout the five year period; and

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- (iv) is able to demonstrate knowledge of language and life in the United Kingdom, unless they are aged 65 or over at the time they make their application, or they fall into one of the exempted categories listed in Chapter 1, Section 18.

If the above requirements are met, settlement may be granted under paragraph 142 of the immigration rules.

Some applicants may have had a short break in their continuous residence during the period between the category being deleted from the immigration rules and reinstated as a concession. Caseworkers should strongly consider using discretion when calculating the five year period in such cases, in line with the guidance in Chapter 5, Section 1, Annex F.

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10. REFUSAL GUIDANCE – SETTLEMENT

Settlement should be refused if **any** of the requirements of paragraphs 139 extracted from the old immigration rules and set out earlier in this IDI are not met.

Chapter 9, Section 1 “Adverse decisions - general guidance” gives important advice about the decision-making process and should be consulted whenever refusal is being considered.

Examples of refusal wordings are given below. Please note that this is **not an exhaustive list** of all possible reasons for refusal.

"You have applied for indefinite leave to remain in the United Kingdom as a representative of ..., an overseas [newspaper/news agency/ broadcasting organisation],

Reason and paragraph	Wording
Not five years in category Paragraph 143 with reference to 142(i) of the current immigration rules	"... but [? in view of ...] the Secretary of State is not satisfied that you have spent a continuous period of five years in the United Kingdom in this capacity."
No switching Paragraph 143 with reference to 142(ii) of the current immigration rules and 139(i) of the old immigration rules	"... but the Secretary of State is not satisfied that you entered the United Kingdom with a valid United Kingdom entry clearance as a representative of an overseas newspaper, news agency or broadcasting organisation."
Not engaged in employment for which EC granted Paragraph 143 with	"... but [? in view of ...] the Secretary of State is not satisfied that you have been engaged in the employment for which your entry clearance was granted throughout the five year period you have

reference to 142(ii) of the current immigration rules and 139(ii) of the old immigration rules	spent in the United Kingdom in this capacity."
Not required for the employment in question Paragraph 143 with reference to 142(ii) of the current immigration rules and 139(iii) of the old immigration rules	"... but [? in view of ...] the Secretary of State is not satisfied that your employer certified that you were required for the employment in question throughout the five year period you have spent in the United Kingdom in this capacity."
Did not work full-time Paragraph 143 with reference to 142(ii) of the current immigration rules, 139(iv) and 136(ii) of the old immigration rules	"... but [? in view of ...] the Secretary of State is not satisfied that you worked full-time as a representative of that overseas [newspaper/news agency/broadcasting organisation] throughout the five year period you have spent in the United Kingdom in this capacity."
Other employment Paragraph 143 with reference to 142(ii) of the current immigration rules, 139(iv) and 136(iii) of the old immigration rules	"... but [? in view of ...] the Secretary of State is not satisfied that you did not take employment other than as a representative of that overseas [newspaper/news agency/ broadcasting organisation] throughout the five year period you have spent in the United Kingdom in this capacity."
Maintenance and accommodation Paragraph 143 with reference to 142(ii) of the current immigration rules, 139(iv) and 136(iv) of the old immigration rules	"... but [? in view of ...] the Secretary of State is not satisfied that you were able to maintain and accommodate yourself [and your dependants] adequately without recourse to public funds throughout the five year period you have spent in the United Kingdom in this capacity."
No longer required for the employment in question Paragraph 143 with reference to 142(iii) of the current immigration rules	"... but [? in view of ...] the Secretary of State is not satisfied your employer has certified that you are still required for the employment in question."

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