

# CHAPTER 5

## SECTION 7 - AIRLINE EMPLOYEES

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#### ANNEX W - REFUSAL FORMULAE

## 1. INTRODUCTION

Paragraph 178 of HC 395 specifies that the term "Operational ground staff" relates to station managers, security managers and technical managers employed at an international airport in the United Kingdom. This category relates to persons employed for the maintenance, repair and overhaul of an international airline's operating fleet.

***Non-EEA nationals, whether operational or not, of British owned airlines require work permits if they are to be based in the United Kingdom.***

### 1.1. Special arrangements for additional security staff

Under exceptional circumstances, where an individual airline has made a case that a specific need exists, as in the case of EI Al Airlines, it has been agreed that additional security staff, who would not otherwise qualify for entry, may be admitted on a concessionary basis and under tightly controlled conditions. These less senior staff will

normally not be allowed to stay beyond 3 years (ie. not long enough for settlement). They should not be confused with security guards arriving as supernumary crew who should be granted leave to enter for 7 days on Code 1. Persons seeking entry in this capacity should not be admitted unless it is clear that the arrangement has been agreed by the ALE Section at Terminal 3 in conjunction with IPD.

***NOTE: Applications for limited leave to remain in respect of airline employees and aircrew based in the United Kingdom are dealt with by ALE Sections at ports, who maintain an index of persons admitted in this capacity.***

*Chapter 16, Section 2 provides guidance relating to aircrew members, including those based in the United Kingdom*

## **2. AIRLINE EMPLOYEES NOT DEALT WITH BY ALE SECTIONS AT PORTS**

### **2.1. Certain staff of Nigeria Airways and Ghana Airways**

There is a bi-lateral Air Services Agreement between British Airways and Nigeria Airways and also between British Airways and Ghana Airways regarding managerial, technical and other specialist staff, employed by Nigeria Airways and Ghana Airways, who are required for the provision of air services in the United Kingdom. These employees do not require a work permit. Persons seeking leave under this arrangement are not dealt with by ALE Sections. IPD, Section 3 should **always** be consulted (via PCS, in the case of IS staff) when applications are received from such employees.

### **2.2. Airline Staff who require work permits**

Unless they qualify otherwise under the Rules, all other staff of overseas airlines and all staff of United Kingdom airlines who are to be based in the United Kingdom are required to have work permits. Such jobs may include:

flight despatcher;

traffic officer;

assistant station manager;

catering manager;

accountant.

It is important to note that the manager and staff of the "Town" office (as opposed to at the port) also require work permits and should not be confused with operational ground staff.

Any applications for variation of the time limit or conditions in respect of persons referred to in paragraphs 2.1. or 2.2. should be made to the Home Office. Landing and embarkation cards should be sent to Home Office in the normal way.

## **3. LEAVE TO ENTER AS A MEMBER OF OPERATIONAL GROUND STAFF**

The requirements to be met by a person seeking leave to enter in this capacity are set out in Paragraph 178 in Part 5 of HC 395 and **must** be referred to when reading the following advice.

### 3.1. Key points

The main points on which the immigration officer needs to be satisfied are:

- that the passenger holds a valid entry clearance endorsed "for employment with ....."; and
- that there is no reason to believe that false representations were made in order to obtain the entry clearance or that circumstances have changed since its issue.
- that refusal is not justified on the grounds of restricted returnability, medical grounds, grounds of criminal record, or on the grounds that the person is the subject of a deportation order or that his exclusion is conducive to the public good.

### 3.2. Granting leave to enter

\* leave to enter should be granted on Code 4 for 12 months;

\* foreign nationals are required to register with the police.

In the case of all persons in this category and their dependants:

\* the letters "ALE" should be entered in the arrival number box in the endorsement placed in the passport and the landing card should be clearly signalled "ALE" in the unshaded part of the box at the top of the card; and

\* the name of the appropriate airline and the port at which the employee is stationed should be noted on the landing card, which should be sent, in accordance with local procedures, to the port in question.

### 3.3. Embarkation cards

When an airline employee or his dependant embarks as a passenger, the embarkation card should be signalled "ALE" and the expiry date of the latest limited leave imposed should be recorded in the appropriate box. The card should be sent to the appropriate port, **not to Home Office**.

### 3.4. Passengers on "ALE" conditions returning to the United Kingdom

Persons in this category **must not** be granted 2 months leave in lieu of expiring conditions. This can create problems where the local ALE office wish to ensure the departure of certain airline employees. Some airline employees may also use the "2 months in lieu" to avoid contact with the ALE office.

\* such persons should therefore be given leave up to the expiry of their previous conditions. If that date has passed, they **should not** be given leave to enter without reference to the ALE office concerned;

\* persons who arrive more than 2 months before the expiry of their previous ALE conditions may be given leave to enter under Section 3(3)(b) in the usual way,

provided they still meet the requirements of the Rules;

- \* the name of the appropriate airline and the port at which the employee is stationed should be noted on the landing card, which should be sent, in accordance with local procedures, to the port in question.

### 3.5. INDECS

There are no INDECS codes for this category of passenger. Landing cards are retained by the appropriate ALE office and details are not entered into the INDECS system.

### 3.6. Refusal of leave to enter

- \* \* A **visa national** seeking entry without a valid United Kingdom visa falls to be refused under Paragraph 320(5). See **Chapter 9, Section 2** to these instructions.
- \* Where a passenger seeking entry in this capacity holds an entry clearance for this purpose, refusal may only be considered under Paragraph 321 (See **Chapter 9, Section 3** to these instructions).
- \* persons who seek to enter under the concessionary arrangements described in paragraph 1.1. above but in respect of whom the arrangement has not been agreed by ALE should be refused entry on the grounds that they require a work permit but do not hold one.
- \* In the case of a person returning to the United Kingdom from a temporary absence abroad, within a period for which he was previously given leave, reference **must** be made, before refusal, to **Chapter 1, Section 9, "Persons returning to resume previous leave"**.

**ANNEX W** (below) provides examples of refusal formulae.

### 3.7. On entry Refusal Codes

E4 Lack of required non-settlement entry clearance, including those set aside on grounds of misrepresentation, forgery, failure to disclose material facts or where a change of circumstances has removed the basis of claim to admission.

B1 For employment without a work permit

Z1 Other reasons

### 3.8. Right of appeal and corresponding refusal form

In either of the circumstances set out in paragraph 3.6. above, there is no right of appeal against refusal of leave to enter as an operational airline employee [Section 13(3B)(a) of the Immigration Act 1971 (as set out in Section 11 of the Asylum and Immigration Appeals Act 1993)].

Form IS 82D should therefore be used.

The "**Port Instructions for on-entry asylum applications**" provides details of the appropriate forms to use in mixed asylum/non-asylum cases.

## **4. LEAVE TO REMAIN AS A MEMBER OF OPERATIONAL GROUND STAFF**

The requirements to be met by a person seeking to remain in the United Kingdom in this capacity are set out in Paragraph 181 of HC 395.

**NOTE: All applications for limited leave to remain in respect of airline employees are dealt with by the appropriate ALE office at ports. Any such applications received by AEAD caseworkers should be referred to the port via Passenger Casework Section. (Where the application has been entered into the INDECS system, an "Application discontinued" result (code 7) should first be recorded.)**

**Note also: The EC/Turkey Association Agreement, 1963, confers certain rights on Turkish Nationals who are already working in the United Kingdom. See section 10 of this chapter "EC/Turkey Association Agreement"**

### **4.1. Key points**

Immigration officers in ALE offices considering such applications must satisfy themselves that:

- the applicant was previously given leave to enter in this capacity, having presented a valid United Kingdom entry clearance (unless he first arrived in this capacity before 1.10.94, when entry clearance became mandatory);
- the application is supported by a letter from the airline, certifying that the applicant is still required for the same employment;
- the applicant does not intend to undertake any other employment; and
- in the case of persons who seek to remain under the concessionary arrangements described in paragraph 1.1. above, that the arrangement is still approved by ALE section at Terminal 3.

### **4.2. Further guidance**

- \* all applications to switch into this category should be refused;
- \* an applicant who has spent a continuous period of 5 years in the United Kingdom in this capacity may apply for settlement. See paragraph 5.1. below for action in such cases;
- \* where no mention is made of settlement, the application should be treated as one for further limited leave to remain (but see paragraph 5.3. below for landing conditions).
- \* applications from airline staff to remain in the United Kingdom on another basis, eg. marriage to a British citizen or settled spouse must be referred to AEAD for decision.

**ANNEX F to Section 1 of this chapter provides guidance relating to applicants who**

*qualify but do not apply for settlement.*

### 4.3. Granting leave to remain

- \* where all the requirements of the Rules are met, leave to remain should be granted on Code 4 for periods of 12 months at a time;
- \* after 5 years in this capacity, persons who apply for **limited leave** in this capacity but **would qualify** for settlement should be granted further leave to remain for up to 3 years on **Code 1**.
- \* foreign nationals are required to register with the police;

### 4.4. INDECS

There are no INDECS codes for this category of applicant. Details are not entered into the INDECS system (except for settlement applications).

### 4.5. Refusal of leave to remain

In the event that such an application falls to be refused, a full report of the situation should be forwarded to AEAD, with a recommendation that they refuse the application in accordance with normal procedures.

*ANNEX W (below) provides examples of refusal formulae.*

### 4.6. INDECS

F9 Refusal (application will need, first, to be entered into the INDECS system).

## 5. SETTLEMENT

Under Paragraph 184 of HC 395, settlement may be granted to those who have completed 5 years here as members of operational ground staff of overseas airlines, **if it is specifically applied for**. However, if such a person, who has been in the United Kingdom for 5 years, applies for leave for a **limited** period, the application should **not** be treated as one for settlement.

### 5.1. Action by the ALE immigration officer

Where such a person applies for settlement, the immigration officer should assess whether or not the applicant qualifies for settlement in this category. The application, **together with the applicant's passport** and a covering report briefly setting out the circumstances and recommending (or not) the granting of indefinite leave, should be forwarded to AEAD, to be dealt with by the appropriate settlement group.

### 5.2. Key points

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

- has spent a **continuous** period of 5 years here in this capacity;
- is still engaged in the same employment; and

- has met the requirements of Paragraph 181 throughout the 5 year period;

### **5.3. Further guidance**

*ANNEX F to Section 1 of this chapter provides guidance relating to:*

- \* calculating the four year period for settlement; and
- \* applicants who qualify but do not apply for settlement

### **5.4. Granting settlement**

- \* If all the above requirements have been met, settlement may be granted.
- \* when all actions have been completed, AEAD Settlement groups should return the papers to the port through Passenger Casework Section so that port records can be noted before the passport is returned to the holder.

### **5.5. INDECS**

1C Settlement granted (after 5 years in this category).

### **5.6. Refusal of settlement**

*Chapter 9, Section 1 "Adverse Decisions - General Guidance"* provides important advice about the decision-making process and should be consulted whenever an application falls to be refused.

Where each of the requirements of Paragraph 184 is not met, the application for settlement should normally be refused.

*ANNEX F to Section 1 provides guidance for action where the requirements for (above) settlement are not met.*

*ANNEX W (below) provides examples of refusal formulae.*

Where the applicant does not qualify for settlement but does qualify for limited leave to remain, the application should be referred back to the port ALE office, **and not to ICD caseworking groups**;

### **5.7. INDECS**

X7 Settlement refusal - premature or inappropriate application - applicant still has concurrent leave

X8 Settlement refusal - no extension of leave granted

**I.S. Enquiries to:** ALE Section, Terminal 3, Heathrow.

ALE Section, Terminal 3, Heathrow - individual cases

**File ref:** IMG/94 13/505/1 (Ground staff)

## **ANNEX W - REFUSAL FORMULAE**

**PLEASE NOTE:** *The following wordings are examples - they do not constitute an*

***exhaustive list of all possible formulae.***

## **ON ENTRY**

"You have asked for leave to enter the United Kingdom as a member of operational ground staff of (name of airline) ..."

### **Non-visa national**

"... but under the Immigration Rules you are required to have a valid entry clearance for this purpose and you have no such entry clearance."

### **Paragraph 180**

***\* No entitlement to appeal by virtue of Section 13(3B)(a)***

{Refusal Code E4}

### **Visa national**

"... 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."

### **Paragraph 320(5)**

***\* No entitlement to appeal by virtue of Section 13(3B)(a)***

{Refusal Code: E4}

### **Other airline employees - no valid work permit**

"You have asked for leave to enter the United Kingdom as a (title of job) but you have no valid work permit"

### **Paragraph 130**

***\* No entitlement to appeal by virtue of Section 13(3B)(a)***

{Refusal Code B1}

## **AFTER ENTRY**

"You have applied for leave to remain in the United Kingdom as a member of the operational ground staff of ..."

### **No switching**

"... but the Secretary of State is not satisfied that you entered the United Kingdom with a valid United Kingdom entry clearance as a member of the operational ground staff of an overseas owned airline."

### **Paragraph 183 with reference to 181(i)**

***\* No entitlement to appeal by virtue of Section 14(2A)(a)***

{INDECS Code: F9}

### **No longer engaged in employment in question**

"... but [? in view of ...] the Secretary of State is not satisfied that you are still engaged in the employment for which entry was granted."

### **Paragraph 183 with reference to 181(ii)**

{INDECS Code: F9}

### **No longer required for the employment in question**

"... 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."

### **Paragraph 183 with reference to 181(iii)**

{INDECS Code: F9}

### **Intention to work part-time**

"... but [? in view of ...] the Secretary of State is not satisfied that you intend to work full-time in this employment."

### **Paragraph 183 with reference to 181(iv) and 178(ii)**

{INDECS Code: F9}

### **Other employment**

"... but [? in view of ...] the Secretary of State is not satisfied that you do not intend to take other employment."

### **Paragraph 183 with reference to 181(iv) and 178(iii)**

{INDECS Code: F9}

### **Not overseas owned airline**

"... but the Secretary of State is not satisfied that they are an overseas owned airline operating services to and from the United Kingdom."

### **Paragraph 183 with reference to 181(iv) and 178(iii)**

{INDECS Code: F9}

### **Maintenance and accommodation**

"... but [? in view of ...] the Secretary of State is not satisfied that you will be able to maintain and accommodate yourself [and your dependants] without recourse to public funds."

### **Paragraph 183 with reference to 181(iv) and 178(iv)**

{INDECS Code: F9}

### **INDEFINITE LEAVE TO REMAIN**

"You have applied for indefinite leave to remain in the United Kingdom as a member of

the operational ground staff of ..."

**Not 5 years in category**

"... but [? in view of ...] the Secretary of State is not satisfied that you have spent a continuous period of 5 years in the United Kingdom in this capacity."

**Paragraph 185 with reference to 184(i)**

{INDECS Code: X7}

**No switching**

"... but the Secretary of State is not satisfied that you entered the United Kingdom with a valid United Kingdom entry clearance as a member of the operational ground staff of an overseas owned airline."

**Paragraph 185 with reference to 184(ii) and 181(i)**

***\* No entitlement to appeal by virtue of Section 14(2A)(a)***

{INDECS Code: F9}

**Not engaged in employment for which entry was granted**

"... but [? in view of ...] the Secretary of State is not satisfied that you were engaged in the employment in question throughout the 5 year period you have spent in the United Kingdom in this capacity."

**Paragraph 185 with reference to 184(ii) and 181(ii)**

{INDECS Code: X8}

**Not required for the employment in question**

"... but [? in view of ...] the Secretary of State is not satisfied that your employer has certified that you were required for the employment in question throughout the 5 year period you have spent in the United Kingdom in this capacity."

**Paragraph 185 with reference to 184(ii) and 181(iii)**

{INDECS Code: X8}

**Other employment**

"... but [? in view of ...] the Secretary of State is not satisfied that you did not intend to take other employment throughout the 5 year period you have spent in the United Kingdom in this capacity."

**Paragraph 185 with reference to 184(ii), 181(iv) and 178(iii)**

{INDECS Code: X8}

**Maintenance and accommodation**

"... but [? in view of ...] the Secretary of State is not satisfied that you were able to maintain and accommodate yourself [and your dependants] without recourse to public funds throughout the 5 year period you have spent in the United Kingdom in this

capacity."

**Paragraph 185 with reference to 184(ii), 181(iv) and 178(iv)**

{INDECS Code: X8}

**No longer required for the employment in question**

"... 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."

**Paragraph 185 with reference to 184(iii)**

{INDECS Code: X8}

**ENTRY CLEARANCE**

"You have applied for entry clearance to the United Kingdom as a member of the operational ground staff of ..."

**Not transferred to UK to take up duty as a manager**

"... but [? in view of ...] the Secretary of State is not satisfied that you have been transferred to the United Kingdom to take up duty at an international airport as a station manager, security manager or technical manager."

**Paragraph 178(i)**

**Not overseas owned airline**

"... but the Secretary of State is not satisfied that they are an overseas owned airline."

**Paragraph 178(i)**

**Intention to work part-time**

"... but [? in view of ...] the Secretary of State is not satisfied that you intend to work full-time in this employment."

**Paragraph 178(ii)**

**Other employment**

"... but [? in view of ...] the Secretary of State is not satisfied that you do not intend to take other employment."

**Paragraph 178(iii)**

**Maintenance and accommodation**

"... but [? in view of ...] the Secretary of State is not satisfied that you can maintain and accommodate yourself and any dependants without recourse to public funds."

**Paragraph 178(iv)**