

CHAPTER 7: SECTION 4 - RETIRED PERSONS OF INDEPENDENT MEANS

ANNEX J - RETIRED PERSONS OF INDEPENDENT MEANS SPOUSES AND CHILDREN

1. INTRODUCTION

The spouse of a person qualifying as the dependant of a retired person of independent means need not be 60 or over. However, such a person would not be allowed to take employment, neither would any dependent children (but see paragraph 3.3 below).

2. LEAVE TO ENTER AS THE SPOUSE OR CHILD OF A RETIRED PERSON OF INDEPENDENT MEANS

The requirements to be met by a person seeking leave to enter as the spouse or child of a person who has been admitted/is being admitted as a retired person of independent means are set out in Paragraphs 271 and 274 in Part 7 of HC 395 and **must** be referred to when reading the following advice.

2.1. Key points

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

- the passenger holds a valid entry clearance as a retired person of independent means; and
- 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.
- 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.

2.2. Granting leave to enter

- * leave to enter should normally be granted in line with that of main applicant on Code 3.
- * Foreign nationals aged 16 or over are required to register with the police

2.3. INDECS

Other person on limited leave to enter

2.4. Refusal of leave to enter

- * Where a **non-visa national** seeks entry in this capacity without a valid United Kingdom entry clearance issued for the purpose of entry as a spouse or child of a retired person of independent means, he should normally be refused entry under Paragraph 273 or 276 of HC 395, respectively.
- * 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).
- * 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 K provides examples of refusal formulae.

2.5. On-entry refusal code

E4 Lack of entry clearance

2.6. Right of appeal and corresponding refusal form

There is no right of appeal against refusal of leave to enter in this capacity where no entry clearance is held.

3. LEAVE TO REMAIN AS THE SPOUSE OR CHILD OF A RETIRED PERSON OF INDEPENDENT MEANS

The requirements to be met by a person seeking to remain in the United Kingdom as a spouse or child of a person who has been admitted as a retired person of independent means are set out in Paragraphs 271 and 274 in Part 7 of HC 395 and **must** be referred to when reading the following advice.

3.1. Key points

Caseworkers must satisfy themselves that the applicant:

- arrived with a valid United Kingdom entry clearance as the spouse or child of a person admitted as a retired person of independent means;
- will be maintained and accommodated without working or recourse to public funds;

spouse only

- is married to a person admitted as a retired person of independent means, that the marriage is subsisting and the couple intend to live together as husband and wife;

child only

- is the child of a person admitted as a retired person of independent means;
- is under the age of 18 or he has current leave to enter or remain in this capacity;
- both parents are being or have been admitted to or allowed to remain in the United Kingdom unless paragraph 274 (vi) a, b or c applies.

3.2. Switching

Where the applicant was not admitted as a spouse or child, caseworkers may waive the no-switching provision in the Rules if they are satisfied that **all** the other requirements for entry are met. Any case which falls to be refused, however, should be refused on no-switching grounds.

3.3. Discretion to allow children of retired persons of independent means to undertake training

Discretion may be exercised in the case of the dependent children of retired persons of independent means to allow them to undertake training on Code 4 **after the first year of residence in the United Kingdom** (a period of one year will normally be needed to ensure that the retired person of independent means can support himself and dependants without working).

Any request, even after a year, for a child of a person in this category to be allowed to take employment other than as a trainee should normally be refused since it must throw doubt on the continued dependence of the child on his parent(s), but discretion **may** be exercised at SEO level to allow this if caseworkers are satisfied that the child remains a dependant and that to prohibit employment would be unreasonable.

3.4. Granting leave to remain

Leave to remain should be granted in line with the main applicant on Code 3.

3.5. INDECS

P1S Spouse of person of independent means

P1C Child of person of independent means

3.6. Refusal of leave to remain

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

Refusal of an extension of stay as the spouse or child of a retired person of independent means is under Paragraphs 273 and 276 of HC 395 on the grounds that each of the provisions of Paragraph 273 or 276 are not satisfied.

ANNEX K (below) provides examples of refusal formulae

3.7. INDECS

P5[S/C] Refusal - tests not met

P6[S/C] Refusal - no switching

P7[S/C] Refusal - other reasons

4. SETTLEMENT

A person who has been a dependant of a retired person of independent means may be granted indefinite leave to remain if:

- “ the applicant was admitted with a valid United Kingdom entry clearance as the spouse or child of a retired person of independent means or was granted leave to remain in this capacity;
- “ the main applicant has been or is at the same time being granted indefinite leave to remain;
- “ the applicant has been, and will continue to be maintained and accommodated without working or recourse to public funds;

Spouse only

- “ the marriage is subsisting and the couple intend to live together as husband and wife;

Child only

- “ he is unmarried, has not formed an independent family unit and is not leading an independent life.

4.1. Granting or refusing settlement

If the spouse/parent is to be granted settlement in this capacity and the other requirements for indefinite leave under Paragraphs 272 and 275 respectively are met, a dependant may be granted indefinite leave to remain.

If the spouse/parent's application is to be refused, the applicant's application should accordingly be refused.

If the spouse/parent has applied for settlement but is granted ***limited leave to remain***, the applicant should also be granted limited leave to remain.

4.2. INDECS

The INDECS will be the same as that for the principal applicant, with the suffix S in respect of a spouse and C in respect of a child.