

Sep/04

IMMIGRATION DIRECTORATES' INSTRUCTIONS

**CHAPTER 8
SECTION 4**

ANNEX P

**CHILDREN BORN IN THE UNITED KINGDOM
WHO ARE NOT BRITISH CITIZENS**

GUIDANCE - GENERAL

PART 1 - GUIDANCE ON INTERPRETATION OF THE RULES

1. DAY TO DAY RESPONSIBILITY

If the parents are living apart, the child should be given leave for the same period as the parent who has day to day responsibility for his physical care. Day to day care is *not* the same as sole responsibility, it means physical care for the child on a day to day basis. (For advice on sole responsibility, see *Section 3* to this chapter, *ANNEX M*). If the parents are divorced or legally separated, the child should be given leave for the same period as the parent with whom he is living, and who is caring for him on a daily basis. A parent claiming day to day care of a child will have to provide evidence of his/her involvement, such as a copy of a custody order, the child's school reports and/or other correspondence with the child's school, or any relevant correspondence with the local social services.

1.1. One parent has day to day responsibility for the child and the other maintains a close interest

There may be a situation where, although one parent has day to day responsibility for the child, the other, who is settled here, maintains a very close interest and involvement in the child's upbringing, and also perhaps looks after him at weekends or during the school holidays. In such an instance, consideration may be given to the granting of indefinite leave, but only where the child or the parent with day to day care requests it. While the particular circumstances of each case will be taken into consideration, it will almost entirely be dependent upon the closeness of the relationship between the child and the parent settled here who does *not* have day to day responsibility, and the degree of involvement he has in the child's welfare and upbringing.

If an application for settlement is made on this basis and it is decided to refuse it, a letter should be sent making it clear that the application has been considered by the Secretary of State outside the Immigration Rules as there are no provisions within the Rules which allow for such a child to be granted settlement on this basis. The letter should clearly state the reason(s) why the application is being refused, for instance, the Secretary of State is not satisfied that the claimed involvement by the parent settled here in the child's

upbringing is of a sufficient degree. There will not be a right of appeal against the refusal to grant settlement on this basis.

2. MAINTENANCE AND ACCOMMODATION

The Rules relating to children born in the United Kingdom who are not British citizens *do not* require that a child can and will be maintained and accommodated adequately without recourse to public funds. However, should such a child not qualify for leave to enter or remain on this basis, and therefore apply under some other category, he would have to meet *all* the relevant requirements including, if appropriate, those relating to maintenance and accommodation.

3. STEP-PARENTS AND OTHERS WITH PARENTAL RESPONSIBILITY

The term "parent" is defined in Paragraph 6 of HC 395 as including a child's step-father where the natural father is dead and the step-mother where the natural mother is dead. In the case of a child born in the United Kingdom who is not a British citizen, it may also include a person who is not a parent or step-parent, *but only* if there has been a genuine transfer of parental responsibility to that person due to a natural parent's inability to care for the child. Such an inability must be as a result of necessity rather than choice.

If the parent with day to day responsibility has re-married, and the new spouse, who has a longer period of leave, can be considered as the child's step-parent, the child should be granted leave for the same period as the step-parent when the parent's leave is extended so that it will be in line with that of the step-parent.

4. FURTHER CONSIDERATION WHERE ALL THE REQUIREMENTS OF PARAGRAPH 305 ARE NOT MET

Where a child does not qualify for leave to enter or remain because both parents are illegal entrants or neither parent has current leave (and neither are British Citizens or has the right of abode), the application will normally be refused. Under Paragraph 307, however, a short period of leave *may* be granted if:

- * the requirements of 305 (ii)-(v) have been satisfied; and
- * if both of his parents are in the United Kingdom and it appears unlikely they will be removed in the immediate future, and there is no other person outside the United Kingdom who could reasonably be expected to care for him.

Where leave is granted in such circumstances, it should be on Code 3 for *up to 3 months*. Any subsequent applications should be dealt with in the light of any decision taken in respect of the family as a whole.

4.1. On entry cases

Where the facts are quite clear and it is evident that neither parent has or qualifies for leave of any sort, leave to enter should be refused to the child under Paragraph 309 of HC 395. Passenger Casework Section should be notified immediately, and ***no directions for removal should be served without authority from them.***

Wherever further enquiry into the parents' circumstances is required, the child should normally be served with form IS 81 and granted temporary admission for an appropriate period so that the facts can be established and Home Office files consulted. Passenger Casework Section should be advised of all such cases without delay.

4.2 Child qualifies under another part of the Rules

Where a child fails to qualify under this part of the Rules, for example, because he has been away from the United Kingdom for more than 2 years, he may still qualify for leave under some other part of the Rules, eg as a student, visitor or child of a parent settled here. However, in order to qualify under those provisions, he will have to meet ***all*** the appropriate requirements.

5. ILLEGITIMATE CHILDREN

While the Immigration Rules define a parent as "the father as well as the mother of an illegitimate child where he is proved to be the father" (HC 395 paragraph 6), the Nationality Act 1981 states that a mother may pass her British nationality to an illegitimate child, but a father cannot. Therefore an illegitimate child born to a British mother and a foreign father will be entitled to British nationality, but a child born to a foreign mother and British father will not be so entitled. The child would be of the same nationality as his mother, and would be subject to immigration control.

PART 2 - OTHER CONSIDERATIONS

6. ENTRY CLEARANCE FOR CHILDREN BORN IN THE UNITED KINGDOM WHO ARE NOT BRITISH CITIZENS

There is no entry clearance ***requirement*** for children seeking entry in this capacity, however it is open to them to apply for entry clearance under this or any other Part of the Rules.

There is no exemption under the Rules to the visa requirement for a child in this category who is a visa national. Where, however, a child who is a visa national, who otherwise qualifies for entry in this category, arrives without a visa, entry should not be refused on that ground alone. Where appropriate, the parents or other person responsible for the child should be advised of the visa requirement.

7. PARENTS WHO ARE ABROAD

Where the parents are abroad, any application by or on behalf of a child for leave should be refused (but see "*Children in the absence of parents*", in ANNEX M to Section 3 of this chapter). Leave may be granted, however, if the child qualifies under another part of the Rules (eg as a student) and all the relevant requirements are satisfied.

8. CHILDREN IN THE CARE OF THE LOCAL AUTHORITY.

Indefinite leave should be granted to a child where the parental rights and duties (or, parental responsibility) have been vested solely in a local authority. This may be, for instance, where a child has been born here and his parents have abandoned him here having themselves left this country. Before granting indefinite leave, it must be established whether or not the conferring of parental responsibility to the local authority is likely to be a long term or permanent measure. If it is not, due perhaps to there being a possibility that the child will be returned to his parents or he will relatively soon be 18 years of age, consideration should be given to the granting of *limited* leave.

9. ON ENTRY - CHILDREN TRAVELLING WITHOUT PARENTS

Children born here on or after 1 January 1983, who have not previously been given leave, should be given leave to enter to bring them in line with their parents, in the usual way, if they have with them evidence of their parents' presence or status here.

Such children should not be held up at ports, even if they do not have with them formal evidence of their parents' presence or status here. If the requirements of Paragraph 305 (ii)-(v) are met, the immigration officer may accept reasonable assertions, from the child or the person in charge of the child, that he is joining a parent or parents who are present in the United Kingdom. Where their immigration status is unknown, the child may be admitted on Code 1 for 2 months and the person in charge should be advised of the need to apply to IND for his leave to be extended.

10. CHILDREN ABSENT FROM THE UNITED KINGDOM FOR LONGER THAN 2 YEARS

Children who have been away for longer than 2 years need formally to qualify for leave to enter under another Part of the Rules and entry clearance would be needed if one was required under the normal provisions of that Part of the Rules. The location of family members will strongly influence the deciding cases in practice, and in general there will be a good case for granting leave to enter if the child is joining or travelling with a parent or other close relative here.

11. WHERE A CHILD HAS NO PASSPORT

If the child has no passport, leave to enter should be endorsed on form IS 116, or a decision to grant leave to remain should be notified by a letter similar to the RON 58. The letter should state the date on which the leave will expire or, if appropriate, that indefinite leave to remain has been granted and that an endorsement will be made when a passport is submitted. The child or his parent(s) should be advised to keep the form or letter as evidence of his immigration status.

The passport when subsequently submitted should be endorsed (where limited leave has been given) to show the expiry date of the leave as previously granted. The endorsement should not be backdated. Where a child has been given indefinite leave to remain the passport, when subsequently submitted, should be endorsed as follows: "... was granted indefinite leave to remain in the United Kingdom on...". The endorsement should be authenticated in the usual way by the caseworker's personal stamp. The "No time limit" stamp is not appropriate.

12. POSITION WHERE NO APPLICATION IS MADE FOR LEAVE TO REMAIN IN RESPECT OF A CHILD BORN IN THE UNITED KINGDOM.

A period of leave cannot be imposed upon a child where no application has been made for it. Consideration can only be given to a child's position here, therefore, where there is a *specific* application for leave. While it cannot be insisted upon that an application be made on the child's behalf, if it appears that he would qualify for leave (for instance, following consideration and granting of an application for leave to his parents), the situation should be explained to the parents so that they may decide whether or not to apply on the child's behalf.

A child whose parents are illegal entrants cannot himself be regarded as an illegal entrant unless he has left the country and re-entered in a manner which is illegal. Thus unless he himself is an illegal entrant, he cannot be removed with his parents, but would be expected to depart with them. He is, however, liable to *deportation under Section 3(5)(c)* of the Immigration Act, 1971, if the head of the household is *deported*.
