

CHAPTER 8  
SECTION 5

## ADOPTED CHILDREN

## 1. INTRODUCTION

The immigration procedures governing adopted children depend in the first instance on whether the child wishing to travel here has already been *adopted overseas*, or the intention is for him *to be adopted through the courts in this country*.

If the child has already been adopted overseas, consideration has to be given as to whether the adoption order issued overseas is recognised as valid for the purposes of United Kingdom law.

*ANNEX Q (below)* provides guidance for assessing whether or not an adoption is valid under United Kingdom law.

If the adoption *is* valid here, the case falls to be considered under Paragraphs 310-316 of HC 395 and advice in respect of such cases is contained in this section.

Applications in respect of children who have been adopted under a "*De Facto*" arrangement, where the adoption has not been legalised, or where the adoption is *not recognised* under United Kingdom law fall to be considered *outside the Immigration Rules*.

*ANNEX R (below)* provides guidance for dealing with "*De Facto*" adoptions.

*ANNEX S (below)* provides guidance for dealing with children coming to the United Kingdom FOR ADOPTION and with children, already here, who are adopted through courts in the United Kingdom.

*ANNEX T (below)* provides flow charts for dealing with adoption cases.

**Note:** Where the child is already related to his prospective adoptive parents, see also *Annex S (below)*, paragraph 3.10 and Section 3 to this Chapter.

## 2. ENTRY CLEARANCE

Once it has been established that the case falls to be considered under Paragraph 310 of HC 395, the majority of entry clearance applications will be considered and decided by the entry clearance officer.

However, caseworkers dealing with those entry clearance applications which have been referred must satisfy themselves that **all** the provisions of Paragraph 310(i)-(x) are met.

## 2.1. Further guidance

*ANNEX M to Section 3 of this Chapter* provides guidance which may be applied to subparagraphs (i)-(iv) of Paragraph 310 of HC 395.

*ANNEX Q (below)* provides guidance relating to subparagraphs (v)-(x).

*ANNEX T (below)* provides: flow charts for dealing with adoption cases; details of intercountry adoption proceedings; and a glossary of terms used in adoption cases.

## 3. INDEFINITE LEAVE TO ENTER

### 3.1. Key points

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

- ◆ the child holds a valid entry clearance endorsed "Settlement - to join father/mother/parents" or "Settlement - accompanying father/mother/parents"; 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.

### 3.2. Further guidance

Most children seeking entry in this capacity will be in possession of an entry clearance, and detailed examination is unlikely to be necessary before indefinite leave to enter is granted. However, where a child does arrive without a valid entry clearance for this purpose it will be necessary to establish:

- \* whether there are any compelling compassionate circumstances which would prevent refusal and removal; and, if so,
- \* whether or not the passenger would have qualified for entry clearance.

*ANNEX Q (below)* provides guidance for interpreting the requirements of the Rules in respect of "Children adopted in designated countries";

*ANNEX M (above) to Section 3* provides guidance for interpreting the requirements of the Rules in respect of "Children", which is also appropriate to this **of this chapter** section.

*ANNEX T (below) provides: flow charts for dealing with adoption cases; details of intercountry adoption proceedings; and a glossary of terms used in adoption cases.*

### 3.3. **Granting indefinite leave to enter**

Where the immigration officer is satisfied that all the requirements of Paragraph 310 have been met or, in the absence of entry clearance, that, after consideration of all the relevant factors, the granting of settlement is the appropriate course of action, indefinite leave to enter may be granted.

### 3.4. **INDECS**

SCO Children under 18 granted indefinite leave to enter.

### 3.5. **Refusal of indefinite leave to enter**

- \* 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, he should be refused entry under Paragraph 313 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*** 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).

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

### 3.6. **On entry Code - Refusal of settlement**

F1 For settlement without required entry clearance, including holder of forged entry clearance, entry clearance obtained by deception, or entry clearance where a change in circumstances has removed basis of claim to admission.

### 3.7. **Right of appeal and corresponding refusal form**

Where no entry clearance is held, there is no right of appeal against refusal of leave to enter in this capacity [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. INDEFINITE LEAVE TO REMAIN

Caseworkers must satisfy themselves that *all* the requirements of Paragraph 311 of HC 395 are met.

##### 4.1. Further guidance

*ANNEX M to Section 3 of this Chapter* provides guidance relating to subparagraphs (i)-(iv) of Paragraph 311.

*ANNEX Q (below)* provides guidance relating to subparagraphs (v)-(x).

##### 4.2. Granting indefinite leave to remain

A child may be granted settlement in this category if all the requirements of Paragraph 311 are met.

##### 4.3. INDECS

3CA Settlement - Adopted children

##### 4.4. Refusal of indefinite leave to remain

*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.

Refusal of indefinite leave to remain in this capacity is under Paragraph 313 of HC 395 on the grounds that each of the provisions of Paragraph 311 are not satisfied.

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

##### 4.5. INDECS

X8 settlement refused

## 5. LIMITED LEAVE TO ENTER WITH A VIEW TO SETTLEMENT

### 5.1. Key points

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

- ◆ the child holds a valid entry clearance endorsed "To join father/mother/parents", "Accompanying mother/father", "Accompanying mother to join father" or "Accompanying father to join mother"; 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.

*Note: Guidance for referred entry clearance applications is provided in paragraph 6 (below).*

### 5.2. Further guidance

*ANNEX Q (below) provides guidance for interpreting the requirements of the Rules in respect of "Children adopted in designated countries";*

*ANNEX M (above) provides guidance for interpreting the requirements of the Rules to Section 3 in respect of "Children", which is also appropriate to this of this chapter section.*

*ANNEX T (below) provides: flow charts for dealing with adoption cases; details of intercountry adoption proceedings; and a glossary of terms used in adoption cases.*

### 5.3. Granting limited leave to enter

- \* Code 1, in line with the limited leave granted to the child's parent, up to a maximum of 12 months;
- \* where the expiry date of the parent's limited leave cannot be immediately established, Code 1 for 2 months (the need to apply for an extension of stay should be explained to the person responsible for the child);
- \* where the child is a foreign national aged 16 or over, the child is required to register with the police *if his parent is required to register with the police.*

#### 5.4. INDECS

The Indecs code should be that which would have been used if the child were accompanying or joining its natural parents eg. CYR, WPD etc.

#### 5.5. Refusal of limited leave to enter

- \* 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, he should be refused entry under Paragraph 316 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* 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).

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

#### 5.6. On entry Refusal Code

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.

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

Where no entry clearance is held, there is no right of appeal against refusal of leave to enter in this capacity [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.

### 6. ENTRY CLEARANCE FOR LIMITED LEAVE TO ENTER OR LIMITED LEAVE TO REMAIN WITH A VIEW TO SETTLEMENT

An adopted child who has a parent who has been, or is being granted *limited* leave with a view to settlement (ie. for a probationary period), is not normally eligible for indefinite leave to enter or remain, *even if* he also has another parent who is settled here or is being granted settlement. Subject to the requirements of Paragraph 314, however, he may be

granted **limited leave** to enter or remain with a view to settlement at the end of the probationary period.

Caseworkers dealing with referred entry clearance applications **or** applications for extensions of stay in this capacity must satisfy themselves that **all** the requirements of Paragraph 314 of HC 395 are satisfied.

#### 6.1. Further guidance

**ANNEX M to Section 3 of this Chapter** provides guidance relating to subparagraphs (i)-(iv) of Paragraph 314.

**ANNEX Q (below)** provides guidance relating to subparagraphs (v)-(x).

**ANNEX T (below)** provides: flow charts for dealing with adoption cases; details of intercountry adoption proceedings; and a glossary of terms used in adoption cases.

#### 6.2. Granting limited leave to remain

- \* Code 1, in line with the limited leave granted to the child's parent, up to a maximum of 12 months;
- \* where the child is a foreign national aged 16 or over, the child is required to register with the police **if his parent is required to register with the police**.

#### 6.3. INDECS

The INDECS code is that used for the parent (G1, G2 or G4) with the suffix C.

#### 6.4. Further applications for limited leave to remain with a view to settlement

There may be instances where subsequent applications for limited leave to remain with a view to settlement are received from adopted children who have already been granted a period of limited leave with a view to settlement. Such applications may arise where the adoptive parent who is subject to a probationary period is required to complete a further probationary period, perhaps due to the temporary breakdown of the marriage. In such a case, it will normally be correct to grant a further period of limited leave with a view to settlement in line with that granted to the adoptive parent providing the requirements of paragraph 314(i) & (iii)-(xi) are **still** satisfied.

However, if the adoptive parent who is subject to a probationary period is **refused** either settlement or a further period of limited leave to remain with a view to settlement, it

would normally be appropriate to refuse the child's application in line with the adoptive parents. If, however, the adoptive parents' marriage has ended and the child is already living with the adoptive parent who is present and settled here, and who has assumed full parental control and responsibility for him on what seems to be a permanent basis, it may be appropriate to grant the child settlement, provided all the requirements of Paragraph 311 are met.

#### 6.5. **Refusal of limited leave to remain**

*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.

An adopted child seeking limited leave to remain with a view to settlement is to be refused by virtue of paragraph 316 of HC395 if it is not satisfactorily demonstrated that the requirements of 314(i)-(x), & (xii) are met.

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

#### 6.6. **INDECS**

X6A refusal - where the child is being refused independently of parent.

Where the child is being refused together with his parent, the code will be that of the parent, with the suffix "C".