

Nov 09

*IMMIGRATION DIRECTORATES' INSTRUCTIONS***CHAPTER 8
SECTION 5A****CHILDREN****1. INTRODUCTION**

Section 55 of the Borders, Citizenship and Immigration Act 2009 requires the UK Border Agency to carry out its existing functions in a way that takes into account the need to safeguard and promote the welfare of children in the UK. It does not impose any new functions, or override existing functions.

Officers must not apply the actions set out in this instruction either to children or to those with children without having due regard to Section 55. The UK Border Agency instruction 'Arrangements to Safeguard and Promote Children's Welfare in the United Kingdom Border Agency' sets out the key principles to take into account in all Agency activities.

Our statutory duty to children includes the need to demonstrate:

- Fair treatment which meets the same standard a British child would receive;
- The child's interests being made a primary, although not the only consideration;
- No discrimination of any kind;
- Asylum applications are dealt with in a timely fashion;
- Identification of those that might be at risk from harm.

This section provides guidance for applications under Paragraphs 297-303 of HC 395, by or on behalf of children, under 18 years of age, seeking:

- * indefinite leave, in line with parents or relatives; or
- * limited leave in line with parents, with a view to settlement after a probationary period.

Section 4 to this chapter provides guidance relating to children born in the United Kingdom who are not British citizens.

Section 5 to this chapter provides guidance for the handling of cases involving children seeking to accompany, join or remain with **adoptive** parents.

ANNEX O to this section provides guidance for dealing with **Children of fiancé(e)s**.

There is no longer any provision under the Rules for **unmarried daughters over the age of 18** to be treated as dependent children. They must be considered as "Other Dependent Relatives" - see **Section 6** of this chapter.

1.1. Definition of a parent

Under Paragraph 6 of HC 395, the term "parent", for the purposes of the Immigration Rules, includes:

- ◆ the stepfather, where the natural father is dead or the stepmother, where the natural mother is dead;
- the father as well as the mother of an illegitimate child (where he is proved to be the father);
- an adoptive parent (provided that the child was legally adopted in a country whose adoption orders are recognised by the United Kingdom - see **ANNEX Q** to this chapter).
- in the case of a child born in the United Kingdom who is not a British citizen, a person to whom there has been a genuine transfer of parental responsibility on the grounds of the original parent's/parents' inability to care for the child.

Note: *In accordance with Paragraph 296 of HC 395, children of a mother who is party to a polygamous marriage may not qualify under the provisions of these Paragraphs of the Rules (See guidance in ANNEX M).*

2. INDEFINITE LEAVE TO ENTER

Subject to the requirements of Paragraph 297 of HC 395, **indefinite** leave to enter the United Kingdom may be granted to a child under 18 years of age where:

- * both parents are present and settled here, or are being admitted on the same occasion for settlement; or
- * one parent is present and settled here and the other is being admitted on the same occasion for settlement at the time the child is seeking admission; or
- * one parent is present and settled here or is being admitted on the same occasion for settlement, and the other parent is **dead**; or
- * one parent is present and settled here or is being admitted on the same occasion for settlement, and has had **sole responsibility** for the child's upbringing; or
- * one parent (**or a relative**) is present or settled here or being admitted for settlement, **and** there are "**serious and compelling family or other**

considerations" which make the child's exclusion undesirable, **and** suitable arrangements have been made for the child's care.

2.1. **Key points for caseworkers dealing with entry clearance applications**

Caseworkers dealing with referred entry clearance applications must satisfy themselves that the child:

- is related as claimed;
- is under 18 years of age;
- is not married or otherwise living independently of his parents; and that
- there is adequate and appropriate maintenance and accommodation for the child.

2.2. **Key points - on arrival in the United Kingdom**

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 "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.

2.3. **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 passenger 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 M (below) provides guidance for interpreting the requirements of the Rules in respect of "Children";

2.4. Granting indefinite leave to enter

Where the immigration officer is satisfied that all the requirements of Paragraph 297 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.

2.5. INDECS

SCO Children under 18 granted indefinite leave to enter.

2.6. 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 300 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).
- * 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 U (to Section 5, below) provides examples of refusal formulae.

2.7. On Entry Codes - Refusal of indefinite leave to enter

- 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.
- Z1 Other reasons.

2.8. 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.

3. INDEFINITE LEAVE TO REMAIN

Subject to the requirements of Paragraph 298 of HC 395, **indefinite** leave to remain in the United Kingdom may be granted to a child under 18 years of age where:

- * both parents are present and settled here; or
- * one parent is present and settled here and the other parent is **dead**; or
- * one parent is present and settled here and has had **sole responsibility** for the child's upbringing; or
- * one parent or a relative is present and settled here and there are "**serious and compelling family or other considerations**" which make the child's exclusion undesirable, and suitable arrangements have been made for the child's care.

3.1. Key points

Caseworkers must satisfy themselves that the child:

- is related as claimed;
- is under 18 years of age; or
- has leave to enter or remain which was granted to him with a view to settlement in this category; and
- is not married or otherwise living independently of his parents; and that
- there is adequate and appropriate maintenance and accommodation for the child.

3.2. Further guidance

Where the child did not enter with entry clearance for this purpose, caseworkers should request evidence (if not submitted) that the child is related as claimed. This should normally be in the form of a full birth certificate showing both parents' names. Where necessary, guidance about suspect documentation may be obtained from ISNFS (the Immigration Service National Forgery Section) at Status Park. Alternatively, assistance may be sought from the entry clearance officer or the authority which issued the document.

***ANNEX M** (below) provides guidance for interpreting the requirements of the Rules in respect of "Children";*

3.3. **Granting indefinite leave to remain**

A child may be granted settlement in this category if all the requirements of Paragraph 298 are met.

3.4. **INDECS**

3BA Settlement - where the child is joining a parent already settled here

Where the child is being granted settlement at the same time as his parent, the INDECS code should be that used for the parent with the suffix C.

3.5. **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 300 of HC 395 on the grounds that each of the provisions of Paragraph 298 is not met.

***ANNEX U** (to Section 5, below) provides examples of refusal formulae.*

3.6. **INDECS**

X8A settlement refused - where the child is refused independently of the parent.

Where the child is refused settlement at the same time as his parent, the INDECS code should be that used for the parent with the suffix C.

4. **LIMITED LEAVE TO ENTER OR REMAIN WITH A VIEW TO SETTLEMENT**

Subject to the requirements of Paragraph 301(i)-(v) of HC 395, **limited** leave to enter the United Kingdom may be granted to a child under 18 years of age where:

- * one parent is present and settled here or being admitted on the same occasion for settlement and the other is being or has been given limited leave to enter or remain with a view to settlement; or
- * one parent is being or has been given leave to enter or remain with a view to settlement, and has had **sole responsibility** for the child's upbringing; or
- * one parent is being or has been given limited leave to enter or remain with a view to settlement, and there are "**serious and compelling family or other considerations**" which make the child's exclusion undesirable, and suitable arrangements have been made for the child's care.

4.1. **Key points for caseworkers dealing with entry clearance applications**

Caseworkers dealing with referred entry clearance applications must satisfy themselves that the child:

- is related as claimed;
- is under 18 years of age;
- is not married or otherwise living independently of his parents; and
- has limited leave to enter or remain in the United Kingdom.

4.2. **Key points - on arrival in the United Kingdom**

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.

4.3. Key points for considering limited leave to remain

Caseworkers must satisfy themselves that the child:

- is related as claimed;
- is under 18 years of age;
- is not married or otherwise living independently of his parents;
- has limited leave to enter or remain in the United Kingdom; and that
- there is adequate and appropriate maintenance and accommodation for the child.

4.4. Further guidance

Where the child did not enter with entry clearance for this purpose, caseworkers should request evidence (if not submitted) that the child is related as claimed. This should normally be in the form of a full birth certificate showing both parents' names.

***ANNEX M** (below) provides guidance for interpreting the requirements of the Rules in respect of "Children";*

4.5. Granting limited leave to enter or remain

- * Code 1, in line with the limited leave granted to the child's parent, up to a maximum of 12 months;
- * on entry, 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.***

4.6. INDECS - on entry

CYR Child granted lte for one year in line with a probationary year parent

4.7. INDECS - after entry

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

4.8. 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 303 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).
- * 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 U (to Section 5, below) provides examples of refusal formulae.

4.9. 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.
- Z1 Other reasons.

4.10. 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.

4.11. 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.

Refusal of limited leave to remain in this capacity is under Paragraph 303 of HC 395 on the grounds that each of the provisions of Paragraph 301 (i)-(v) is not met.

ANNEX U (to Section 5, below) provides examples of refusal formulae.

4.12. 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".