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**B. LEAVE TO ENTER FORMULAE FOR PERSONS WHO HAVE OBTAINED
LEAVE TO ENTER BEFORE ARRIVAL IN THE UK (PARAGRAPH 321A
OF HC 395)**

**CHAPTER 9
SECTION 3A****CANCELLATION OF LEAVE TO ENTER
IN RELATION TO A PERSON WHO OBTAINED
LEAVE TO ENTER BEFORE ARRIVAL IN THE UK****1. INTRODUCTION**

A visa national should normally be refused entry under Paragraph 320(5) if he does not hold a valid and current visa issued to him for the purpose for which he seeks entry. Similarly a non-visa national seeking entry in a category for which entry clearance is mandatory should normally be refused entry under the appropriate paragraph if he does not hold a valid entry clearance issued to him for that purpose.

Under Article 7 of the Immigration (Leave to Enter and Remain) Order 2000 an immigration officer may give or refuse a person leave to enter the United Kingdom at any time before his departure for, or in the course of his journey to the UK. Therefore, a person arriving in the UK may either;

- (i) have been given leave to enter by an IO under Article 7 of the 2000 Order;
- (ii) have an entry clearance which has effect as leave to enter (i.e. it specifies the purpose for which the holder wishes to enter the United Kingdom and is endorsed with the conditions to which it is subject or a statement that it is to have effect as indefinite leave to enter the UK) (see **Chapter 1 Section 4**);
- (ii) have an entry clearance that does not have effect as leave to enter (see **Chapter 9 Section 3**);
- (iii) have neither an entry clearance or leave to enter.

Where leave to enter has been obtained prior to a person's arrival in the UK under Article 7 of the 2000 Order, leave to enter may be cancelled, in the circumstances described in Paragraph 321A of HC 395 as follows:

- ◆ false information was given to obtain the leave, or
- ◆ **material** facts were withheld; or
- ◆ there has been a change of circumstances, since the leave was given, that it should be cancelled
- ◆ medical reasons, save in relation to a person settled in the UK or where there are strong compassionate reasons justifying admission;
- ◆ where the exclusion of the person from the UK is conducive to the public good;

- ◆ in cases where the person is outside of the UK only, failure by that person to supply any information or documents requested by an Immigration Officer on behalf of the Secretary of State.

2. EMPLOYMENT OF FALSE REPRESENTATIONS OR FAILURE TO DISCLOSE MATERIAL FACTS

2.1. False Representations

Whether or not the leave should be cancelled depends not on whether it would have been granted on the basis of all the facts known to the immigration officer at the port, but whether the false representations made for the purpose of obtaining the clearance played a part in the granting of that clearance.

In order to justify cancellation of leave to enter, the immigration officer will need to:

- ◆ establish that false (i.e. inaccurate) representations were made *for the purpose of* obtaining the clearance; and
- ◆ show that the representations were sufficiently linked to the issue of the clearance to remove the eligibility reflected in it - in other words, that it is likely that the clearance would not have been issued had the true facts been known.

Relevant representations may include verbal or written statements, those entered on the application form or documents submitted in support of an application. In order to cancel leave under this ground the false representation must have been made by the Applicant.

Minor misrepresentations, e.g. inaccuracies on the entry clearance application form which have no real bearing on the case, may be disregarded, provided that the passenger is generally acceptable for the purpose for which he seeks entry.

2.2. Failure to disclose material facts

The leave may be cancelled where the leave was obtained as a result of that person's failure to disclose material facts.

It should be noted, however, that the Court of Appeal has held (in the case of IRACKI) that there is no positive duty of candour on an applicant to volunteer information to the entry clearance officer unless he is given an indication of the kind of information which is material to the application. Cancellation of leave on this ground is not therefore applicable if the entry clearance officer / immigration officer did not indicate to the passenger the kind of information he required.

3. CHANGE OF CIRCUMSTANCES

Paragraph 321A(1) applies where there has been a change of circumstances in a person's case since the leave was such that it should be cancelled. Examples of such a change of circumstances would include the withdrawal of an offer of employment in the case of a person with an entry clearance for "Employment", the withdrawal of sponsorship in a student case or the permanent departure from the United Kingdom of the sponsor of a child coming for settlement.

4. MEDICAL GROUNDS

Leave may be cancelled where it is apparent that for medical reasons, it is undesirable to admit that person to the UK except where a person is settled in the UK or where the Immigration Officer or Secretary of State is satisfied that there are strong compassionate reasons justifying admission.

5. EXCLUSION CONDUCTIVE TO THE PUBLIC GOOD

5.1. Secretary of State's personal exclusion

Where the Secretary of State has personally directed that a person's exclusion from the UK is conducive to the public good, their leave should be cancelled. Such a person has no right of appeal unless the Appellant seeks to rely on an enforceable community right or any provision made under s.2(2) of the European Communities Act 1972, or seeks entry to exercise rights of access to a child, or as a spouse, fiancé(e), parent, grandparent or other dependent relative.

When a person has their leave cancelled at the personal direction of the Secretary of State the appropriate cancellation form is IS 82B CANX.

5.2. Immigration Officer's discretion

The immigration officer has discretion to cancel a person's leave to enter if it seems right to cancel leave on the ground that exclusion from the UK is conducive to the public good, for example, in the light of the passenger's character, conduct or associations. In the event of an appeal, the immigration officer will have to show in his explanatory statement that the public good was served by the cancellation of the person's leave.

The immigration officer must specify what past or future action of the person makes his exclusion conducive to the public good. Vague generalisations that a person's character, conduct and associations render his exclusion desirable will not suffice.

Where the case touches on matters of *national security*, the terms of the cancellation should be agreed by an *Assistant Director* before the cancellation notice is served. The reason for cancelling the leave must be specific and not couched in general terms.

See *Annex B* for a list of cancellation paragraphs on non-conducive grounds.

Note: Returning residents, who otherwise qualify for entry under Paragraphs 18 or 19, and the spouse or child under 18 of a person settled in the UK are not exempted from refusal under this Paragraph.

5.3. **Implications of the Rehabilitation of Offenders Act 1974**

The provisions of the Rehabilitation of Offenders Act 1974 must be applied in any case where the immigration officer wishes to exercise his discretion to cancel a person's leave under paragraph 321A(5) to a person who has been convicted of a criminal offence.

5.4. **Cancellation of Leave – Drugs cases**

Where a person has been charged with a drug offence consideration should be given to cancelling the person's leave (and hence the entry clearance). In these cases consideration should be given to the seriousness of the offence and the likely penalty on conviction. For example:

- ◆ If the quantity of the drugs is small and the passenger has sufficient money to cover the likely fine and his proposed stay in the United Kingdom, no further action need be taken by the immigration officer other than a submission of a short report;
- ◆ If the quantity of drugs is such that there is good reason to believe that they are intended for sale, or if the passenger is addicted to the use of drugs or he has been involved in their regular use over a period of time, he should have his leave cancelled under 321A(5).

6. **FAILURE TO SUPPLY ANY INFORMATION / DOCUMENTS REQUESTED WHILST ABROAD WHEN SEEKING LEAVE**

Where a person is outside of the UK and seeking leave to enter the UK, the Immigration Officer may seek the information and documents that he would be entitled to obtain in an examination at the port. Since the immigration officer examining someone abroad cannot refer the applicant to the port medical inspector, an up to date medical report can be requested instead. Failure to provide the information, documents or medical report is a ground for refusal of leave to enter.

7. **IMPERSONATORS/HOLDERS OF FORGED DOCUMENTATION**

Where a passport is forged or fraudulently obtained, or the passenger is an imposter, the passenger does not have current entry clearance having effect as leave to enter and should be treated as someone requiring leave to enter. In the case of a falsified EC, the EC

is invalid and the passenger should be treated as someone requiring leave to enter. The entry clearance should be cancelled and the passenger has a right to a preliminary issue hearing if he asserts that the EC has not been falsified.

8. REFERENCE TO ISSUING OFFICER

In order to establish what information was available to the entry clearance officer, Ports may contact British Diplomatic Service posts abroad either directly by fax or through the Joint Entry Clearance Unit (JECU). Precise instructions on how to contact posts are held at all ports. The message sent to the issuing officer should normally request a copy of the visa / entry clearance application form together with any supporting documents and should list any specific questions to which the answer is required. It should be borne in mind, however, that both the message and the reply will have to be produced in the event of an appeal.

9. PRACTICAL CONSIDERATIONS

9.1. Cancellation formulae

ANNEX B (below) provides examples of cancellation formulae.

9.2. Right of appeal and corresponding cancellation forms

There is no right of appeal against the refusal of leave to enter (except where a person is in possession of a current entry clearance) as a visitor, a short-term student, a prospective student or a dependent of one of these categories

Form IS 82 CANX should therefore be used.

9.3. Removal Directions

It is not necessary to delay the serving of removal directions, even if the passenger states his intention of exercising his right of appeal before removal. Once he has appealed, however, any removal directions must be deferred pending the appeal.