

HJT

TRAINING
PROFESSIONALS

HJT Training Immigration Manual

No part of this book may be reproduced or utilised in any form or by any electronic or mechanical, including photocopying, recording or by any information storage and retrieval system without permission in writing.

Further information and copies of this manual can be obtained from:

HJT Training Ltd
Cutlers Court
3rd Floor
115 Houndsditch
London EC3A 7BR

DX: 582 London/City

t +44 (0) 20 3405 2942
e enquiries@hjt-training.co.uk

HJT Training is a company limited by guarantee. Registered in England and Wales. Reg no. 4891943

ISBN: 978-0-9554356-8-3

Version 10.1

Contents

INTRODUCTION	1
THE HJT IMMIGRATION MANUAL.....	3
THE LSC ACCREDITATION SCHEME.....	3
THE OISC REGISTRATION SCHEME.....	4
SOURCES OF INFORMATION ON IMMIGRATION LAW	5
CHAPTER 1: IMMIGRATION CONTROL.....	7
KEY CONCEPTS	9
FORMS OF CONTROL	10
PERMISSION TO TRAVEL, ENTER AND REMAIN	11
SOURCES OF LAW	18
MAKING AN APPLICATION.....	25
CHAPTER 2: IMMIGRATION CATEGORIES AND POLICIES.....	35
NAVIGATING THE RULES	39
COMMON REQUIREMENTS OF THE RULES	40
VISITORS	57
STUDENTS AND THEIR FAMILIES	61
SHORT-TERM EMPLOYMENT CATEGORIES.....	62
LONG RESIDENCE	63
SPOUSES AND CIVIL PARTNERS	66
FIANCÉ(E)S AND PROPOSED CIVIL PARTNERS	74
UNMARRIED PARTNERS.....	75
CHILDREN	77
OTHER FAMILY MEMBERS	81
RETURNING RESIDENTS	84
POLICIES AND CONCESSIONS	86
CHAPTER 3: INTERNATIONAL PROTECTION	101
REFUGEE LAW AND HUMANITARIAN PROTECTION	103
THE REFUGEE CONVENTION	103
WELL FOUNDED FEAR	105
BEING PERSECUTED.....	122
THE CONVENTION REASONS.....	130
PROTECTION AND RELOCATION	134
NON REFOULEMENT	139
CESSATION CLAUSES	140
EXCLUSION CLAUSES.....	141
HUMANITARIAN PROTECTION	147
CHAPTER 4: ASYLUM PROCESS AND PRACTICE.....	153
CLAIMING ASYLUM	155
AGE DISPUTES.....	158
FAST-TRACK APPEALS	161

SAFE THIRD COUNTRY CASES	163
'CLEARLY UNFOUNDED' CERTIFICATES	167
FRESH CLAIMS.....	168
BENEFITS OF RECOGNITION AS A REFUGEE	182
BENEFITS OF HUMANITARIAN PROTECTION	186
CHAPTER 5: HUMAN RIGHTS LAW	189
HUMAN RIGHTS ACT 1998	191
EUROPEAN CONVENTION ON HUMAN RIGHTS	193
ECHR AND IMMIGRATION LAW	196
ARTICLE 2	196
ARTICLE 3	197
ARTICLE 4	206
ARTICLE 5	207
ARTICLE 6	208
ARTICLE 8	209
ARTICLE 14	226
DISCRETIONARY LEAVE	226
TRAVEL DOCUMENTS	228
CHAPTER 6: EUROPEAN COMMUNITY LAW.....	231
UNDERLYING LEGAL PRINCIPLES	233
COUNTRIES TO WHICH EC LAW APPLIES	235
INTERACTION OF UK AND EC LAW	237
WHO BENEFITS?	241
BENEFITS OF THE EXERCISE OF TREATY RIGHTS	254
EXCLUDING AND REMOVING EEA NATIONALS FROM UK	260
RIGHTS OF APPEAL	263
ACCESSION STATES	264
THE ANKARA AGREEMENT.....	265
CHAPTER 7: BRITISH NATIONALITY LAW	273
A BRIEF HISTORY OF NATIONALITY LAW	275
BIRTH OR ADOPTION IN THE UK.....	279
BIRTH OUTSIDE THE UK	283
ACQUISITION BY REGISTRATION AS AN ADULT.....	286
NATURALISATION	287
CHALLENGING NATIONALITY DECISIONS	291
STOPPING BEING BRITISH	291
CHECKLIST FOR NATIONALITY	294
CHAPTER 8: POINTS BASED SYSTEM.....	295
INTRODUCTION	297
SPONSORSHIP UNDER THE POINTS-BASED SYSTEM.....	298
DOCUMENTARY EVIDENCE AND HOME OFFICE GUIDANCE	301
OVERSTAYING AND EXTENSION APPLICATIONS.....	304
TIER 1: HIGHLY SKILLED	305
TIER 2: SKILLED WORKERS	314

TIER 4: STUDENTS.....	321
TIER 5: YOUTH MOBILITY AND TEMPORARY WORKERS.....	331
DEPENDANTS OF PBS MIGRANTS.....	337
RIGHT OF APPEAL.....	338
RIGHT OF REVIEW.....	339
CHAPTER 9: ENFORCEMENT: DETENTION AND DEPORTATION	341
DETENTION.....	343
RELEASE AND BAIL.....	353
ADMINISTRATIVE REMOVAL.....	361
DEPORTATION.....	362
CHAPTER 10: RACE DISCRIMINATION.....	373
RACE RELATIONS AND IMMIGRATION LAW AND PRACTICE.....	375
EQUALITY ACT 2010.....	377
RACE DISCRIMINATION IN IMMIGRATION CASES.....	381
CHAPTER 11: THE LAW OF APPEALS.....	385
RIGHT OF APPEAL.....	387
GROUNDS OF APPEAL.....	393
APPEALS STRUCTURE.....	395
FIRST TIER TRIBUNAL.....	401
SEEKING PERMISSION TO APPEAL FROM THE FTT.....	417
SEEKING PERMISSION TO APPEAL FROM THE UT.....	422
PURSUING AN UPPER TRIBUNAL APPEAL.....	423
ONWARD APPEAL.....	427
TRIBUNAL DETERMINATIONS AS PRECEDENTS.....	429
CHAPTER 12: CRIMINAL OFFENCES.....	431
INTRODUCTION.....	433
IMMIGRATION OFFICERS AND POLICE POWERS.....	433
ARTICLE 31 DEFENCE AGAINST PROSECUTION.....	434
TRAFFICKING.....	435
OFFENCES UNDER THE IMMIGRATION ACT 1971.....	435
OFFENCES UNDER THE 2004 ACT.....	440
OFFENCES IN NATIONALITY ACTS.....	441
EMPLOYER AND FINANCIAL INSTITUTION OFFENCES.....	441
GIVING IMMIGRATION ADVICE: THE OISC.....	442
OFFENCES CONNECTED WITH SUPPORT.....	443
CHAPTER 13: PROFESSIONAL ETHICS.....	447
GENERAL DUTIES.....	449
BASIC PRINCIPLES.....	449
FALSE REPRESENTATIONS.....	450
APPEALS.....	451
COSTS AND CLIENT CARE.....	451
SUPERVISION.....	452
LIENS – RETENTION OF DOCUMENTS.....	453

STANDARD OF WORK.....	453
SUPERVISION OF STAFF	454
CONFLICT OF INTEREST	455
CONFIDENTIALITY	458
MONEY LAUNDERING.....	461
DUTIES TO THE COURT.....	462
COMPLAINTS PROCEDURES	465
CHAPTER 14: PRACTICAL SKILLS	469
ASYLUM APPLICATIONS	471
PROFESSIONAL CONDUCT REGARDING ASYLUM CLAIMS	477
EXPERT EVIDENCE PRACTICE DIRECTION	478
COMMISSIONING MEDICAL EVIDENCE.....	480
COMMISSIONING COUNTRY EXPERT EVIDENCE.....	484

Introduction

THE HJT IMMIGRATION MANUAL	3
THE LSC ACCREDITATION SCHEME	3
THE OISC REGISTRATION SCHEME.....	4
SOURCES OF INFORMATION ON IMMIGRATION LAW	5

The HJT immigration manual

This manual was originally devised and written with a view to training practitioners for the immigration accreditation scheme run by the Legal Services Commission and the Solicitor Regulation Authority. Since the first edition, the manual has been extensively rewritten and revised to reflect changes in the law and to improve the delivery of the information the manual contains. This latest edition continues that tradition of continual improvement.

The manual is now accompanied by specially designed complementary training materials, namely a set of Powerpoint slides based on the graphics boxes, examples and tips that have gradually been introduced into the manual and an extensive set of questions and model answers structured around the chapters of this manual. Contact HJT Training if you are interested in making use of these materials.

During its short lifetime, the manual has evolved to become the leading introductory text for new immigration practitioners and for students of immigration law. Hundreds of new immigration lawyers have been trained by HJT Training using this manual.

The original contributors included Gail Elliman, David Jones, David Robinson, Mark Symes and Colin Yeo. Later editions have been extensively re-written and updated by Colin Yeo. Thanks go to Vincent Fox for invaluable assistance with updating and correcting, to Androulla Demetriou for her design expertise and to Natasha Knight for her patience and hard work in producing the printed edition.

The LSC accreditation scheme

The Legal Services Commission (LSC) requires any contributor to a legal aid contract in immigration law to be accredited under the accreditation scheme. There are three levels to this scheme. This manual is suitable for training for levels 1 and 2.

It is beyond the scope of the manual to describe the requirements of the accreditation scheme and the nature of the examinations at levels 1 and 2. HJT Training runs revision courses before each round of examinations which address these issues.

Information on the LSC accreditation scheme is, unfortunately, not necessarily easy to obtain. Responsibility for the scheme is divided between a number of organisations, as follows:

- **Legal Services Commission.** The LSC requires those billing work under an immigration legal aid contract to be accredited under a Law Society scheme that the LSC persuaded the Law Society to institute. The LSC website is notoriously almost impossible to navigate but is the place to look for information about the requirement to be accredited (or reaccredited).

- **The Law Society.** The accreditation scheme belongs to the Law Society even if it is effectively imposed by the LSC. The Law Society had transferred responsibility for the immigration accreditation scheme to the Solicitors Regulation Authority but it seems to have been transferred back to the Law Society some time in 2009. The Law Society website is the place to look for information about the requirements of the scheme.

See www.lawsociety.org.uk > Member Services > Accreditation schemes > Immigration and Asylum

The most useful documents for an aspirant accredited caseworker are the standards and guidance documents for levels 1 and 2. For some reason each document is divided into standards, which tell one very little about what one is expected to know, and then much more specific guidance, which is far more helpful in providing direction for a potential examinee. The guidance constitutes essential reading for anyone seeking to sit the exams. At the time of writing it had last been updated in February 2010.

- **Central Law Training.** CLT administer the examinations and their website is the place to look for information about when the next round of examinations is scheduled.

Past examination papers are not publicly available. HJT has created a major resource of questions in the same style and of the same approximate level of difficulty to those that will be faced in the examinations. The HJT examination pack, available from HJT Training, includes questions and model answers and model mark schemes.

The OISC registration scheme

The Office of the Immigration Services Commissioner (OISC) was created by the Immigration Act 1999 and regulates immigration advisers who are not exempted from the scheme by virtue of their professional status (primarily solicitors and barristers). In short, those who are not solicitors (or working under the supervision of a solicitor) or barristers are not permitted to give immigration advice, unless they are properly regulated by the OISC.

Again, it is beyond the scope of the manual to describe the OISC scheme in detail. As with the LSC scheme, there are knowledge and skills examinations and assessments that must be completed in order to register with the OISC. The OISC scheme also requires a successful applicant to show knowledge of the OISC Code of Practice and the existence of certain minimum best practice business practices. Unlike the LSC scheme, these are administered and run directly by the OISC itself.

See www.oisc.gov.uk for further details.

Neither HJT Training nor any other training provider can provide OISC accreditation or registration as this lies with the OISC alone. However, HJT Training does offer training that will assist a person seeking registration with the OISC and is an OISC Continuing Professional Development (CPD) training provider.

The levels of the OISC and LSC schemes broadly correspond as follows:

LSC	OISC
Probationer	Level 1 (signposting only)
Level 1 (accredited caseworker)	Level 2
Level 2 (senior caseworker)	Level 3
Level 3 (advanced caseworker)	No equivalent

Sources of information on immigration law

Immigration law changes on a very frequent basis. As will be seen in the following chapter, new immigration Acts of Parliament are now passed on an annual basis, and immigration law is cursed by a complex plethora of secondary legislation, rules and European directives and regulations. It is an extremely complex subject. Mastering it is difficult, and staying up to date is even harder.

As well as this manual, HJT can recommend the following as sources of information on immigration law and practice:

- **ILPA.** Membership of the Immigration Law Practitioners Association is essential for any serious immigration lawyer. The monthly ILPA mailing to members, ILPA emails and sub-committee email lists are invaluable and unrivalled sources of information. The various ILPA best practice guides are essential reading for any new immigration lawyer aspiring to become a good immigration lawyer.
- **JCWI.** The Joint Council for the Welfare of Refugees publishes the famous JCWI Handbook every few years and this is one of the standard reference works for immigration lawyers.
- **Macdonald, *Immigration Law and Practice*.** This is the gold standard immigration law reference book.

- **Symes and Jorro**, *Asylum and Human Rights Law and Practice*. This is the gold standard asylum, human rights and international protection reference book.
- **Refugee Legal Group**. The RLG was formerly an informal group of asylum lawyers who met on a monthly basis. In recent years it has morphed into a members-only internet forum of around 900 members administered by Asylum Aid. It is an invaluable source of information. Be warned, though: asking unintelligent questions on the group exposes one's ignorance to a very wide field indeed.
- **Update websites**. There are various websites that provide updates on immigration and asylum law, including:

UK Border Agency: www.ukba.homeoffice.co.uk

ILPA: www.ilpa.org.uk

Garden Court Chambers immigration update:
www.gardencourtchambers.co.uk

Free Movement blog: <http://freemovement.wordpress.com>

NCADC (National Coalition of Anti Deportation Campaigns):
www.ncadc.org.uk

ICAR (Information Centre about Asylum and Refugees): www.icar.org.uk

Chapter 1: Immigration control

KEY CONCEPTS.....	9
EXCLUSIONARY PRINCIPLE.....	9
EXEMPTION FROM CONTROL.....	9
Right of abode.....	9
European Community law.....	10
FORMS OF CONTROL	10
PERMISSION TO TRAVEL, ENTER AND REMAIN	11
ENTRY CLEARANCE	12
LEAVE TO ENTER OR REMAIN	15
IMMIGRATION CATEGORIES.....	16
SOURCES OF LAW	18
PRIMARY LEGISLATION	19
SECONDARY LEGISLATION	23
IMMIGRATION RULES.....	24
POLICIES AND CONCESSIONS	24
MAKING AN APPLICATION.....	25
TIMING	25
Automatic extension of leave.....	26
Effect of an invalid application.....	26
APPLICATION FORMS AND FEES.....	28
Out-of-country applications.....	28
In-country immigration status applications	29
OTHER MANDATORY REQUIREMENTS	32
FURTHER REPRESENTATIONS	33

Key concepts

Exclusionary principle

The fundamental rule of immigration control is that it is exclusive in nature. Everyone is excluded from lawful entry or residence unless they are either exempted from control or have permission.

General rule

- Everyone is excluded

Unless

- Not subject to immigration control
- Permission ('leave') is granted

This basic rule, the founding principal of immigration law, is derived from s.1 Immigration Act 1971, still the framework Act for immigration control, despite heavy amendments over the intervening years:

s.1(1) All those who are in this Act expressed to have the right of abode in the United Kingdom shall be free to live in and to come and go into and from, the United Kingdom...

(2) Those not having that right may live, work and settle in the United Kingdom by permission and subject to such regulation and control of their entry into, stay in and departure from the United Kingdom as is imposed by this Act...

The 'right of abode' referred to at section 1(1) of the 1971 Act is therefore an extremely important form of status, as it exempts the possessor from immigration controls.

Exemption from control

Those not subject to immigration control include British citizens and others with what is called the 'right of abode' and also EEA nationals and others who can rely on European Community law.

Right of abode

The right of abode is an example of legacy terminology from an earlier era of immigration control. As is discussed in the chapter on nationality law, from 1948 there was one principle form of citizenship status across the UK and its colonies, Citizenship of the United Kingdom and Colonies ('CUKC'). That status persisted until the great reform of citizenship laws in the British Nationality Act 1981. In the meantime, however, politicians sought to limit the right of residents of the colonies to live in the United Kingdom itself. The way in which this was achieved was to introduce the concept of the 'right of abode', which was independent from

citizenship status. A person could therefore be a CUKC but not possess the right of abode.

When the right of abode was initially introduced it was linked to another new concept, that of 'patriality'. Put simply, the right of abode was acquired through one's male ancestors having been born in the territory of the United Kingdom.

The law has moved on considerably since those dark days, but the concept of the right of abode still persists.

Today, British citizens hold the right of abode. There are also some individuals who hold the right of abode but who are not British citizens, but they are few in number and are addressed in the chapter on nationality.

European Community law

It can be seen that section 1 of the 1971 Act makes no mention of any exception or carve out for European Union or European Economic Area ('EEA') citizens and their families. This is because the Act itself does not apply to them at all. In fact, it is prohibited that an Immigration Officer even endorse any form of immigration status in a passport of an EEA citizen, and they do not require passports to travel within the European Economic Area.

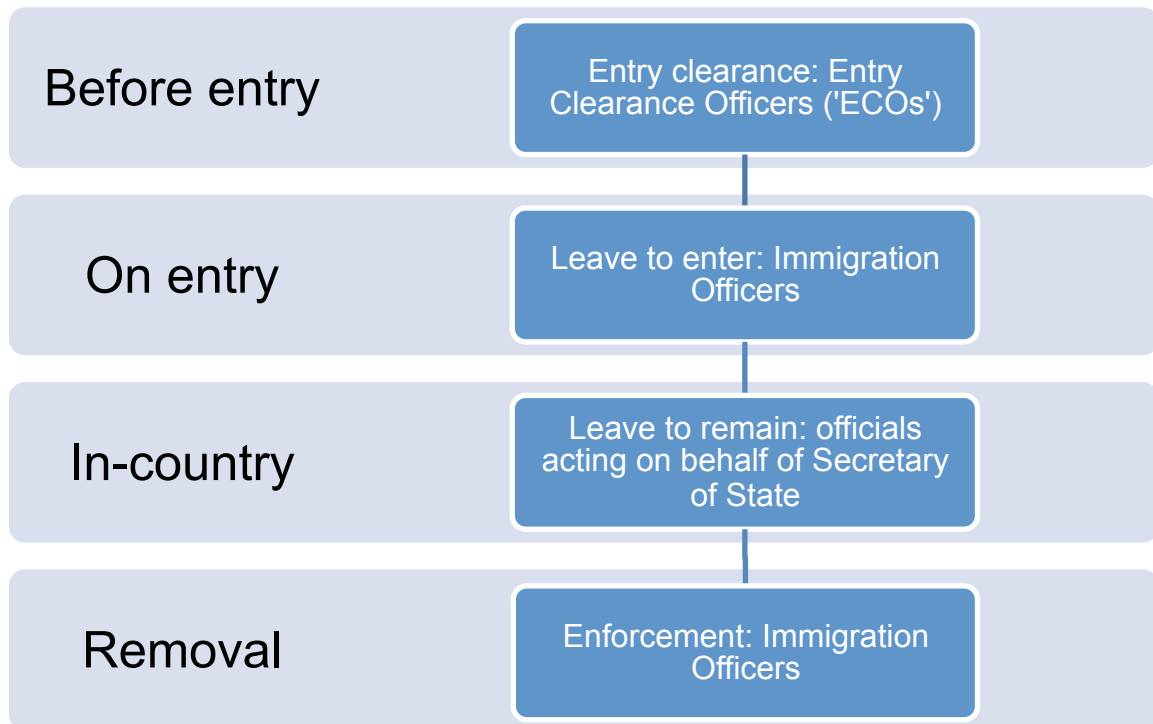
This subject is addressed in more detail in the chapter on European Community law. Suffice it to say for now that many or even all of the principles that apply in domestic UK immigration law have little or no place in dealing with EEA citizens.

Forms of control

In order to enforce immigration laws, a number of forms of control have been introduced, operated by different officials. All immigration officials now operate within the UK Border Agency (sometimes abbreviated to 'UKBA'), which is an agency within the Home Office.

The functions of the UK Border Agency were originally performed mainly by the Immigration and Nationality Directorate ('IND'). This was then briefly re-designated the Border and Immigration Agency ('BIA'), which then became the UK Border Agency. Entry clearance work abroad (see below) was carried out by an organisation called UK Visas, a joint operation between the Home Office and Foreign and Commonwealth Office. The separate identity for UK Visas has now been abandoned and it has been merged into the UK Border Agency. References to these predecessor organisations will sometimes be encountered in immigration work.

The main forms of immigration control (and the personnel responsible) are as follows:



There are also additional controls on employers and educational institutions designed to penalise them for employing or recruiting as students those who break immigration laws.

Immigration officials are endowed by legislation with wide powers to enforce immigration laws. Most of these powers originate in the 1971 Act and include the power to search, seize, detain, question, arrest and enforce departure. These powers are not restricted to use on foreign nationals without the right of abode: an Immigration Officer also has the power to detain and question a British citizen in order to establish that they are indeed actually a British citizen.

Permission to travel, enter and remain

It can be seen from section 1 of the 1971 Act that for those not exempt from immigration control, their entry into, stay in and departure from the United Kingdom and their ability to live, work and settle in the UK is determined by the Act. In short, they must have permission to do any of these things.

The terminology used in immigration law throughout the Immigration Acts is that of 'leave', although we also need to mention entry clearance at this stage:

Entry clearance

- Pre-entry control, more commonly referred to as a 'visa'

Leave to enter

- Permission to enter into the UK, usually granted at port

Leave to remain

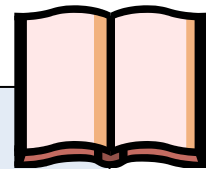
- Leave to remain in the UK, usually granted in-country

Limited leave

- Time limited leave, granted for a certain period with a specified expiry date

Indefinite leave

- Unlimited leave that has no expiry date (but which can be lost, see below)



Example

Elvis is Kosovar. He entered the UK illegally in the back of a lorry. He remained illegally for several years, never making any application to the Home Office. He decides to try to regularise his position by applying for leave.

Technically he is actually seeking leave to enter, even though he has been here for many years. This could be important as it might entitle him to a right of appeal he would not otherwise get (see chapter on appeals law). However, if his application were to succeed it might well be endorsed as leave to remain by the Home Office, simply because officials inside the UK are more accustomed to issuing leave to remain. There is no substantive difference between leave to enter and leave to remain once it is granted.

Entry clearance

Entry clearance is a form of pre-arrival control. Rather than allowing any person to arrive at a port and seek entry at that stage, requiring an Immigration Officer to make a snap decision on a potentially complex case, many immigrants seeking to enter the UK are required to possess entry clearance, a visa, before they physically arrive at an entry point to the UK. If a person is required to have entry clearance and does not they must be refused entry (immigration rule 320(5)).

The rules on who does and does not require entry clearance are as follows:

'Visa nationals'

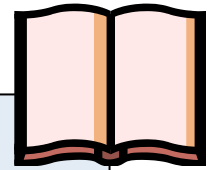
- Always required: Appendix 1

Stay of 6 months +

- Always required: Rule 24

Rule says so

- Always required: check individual rules



Example

Alasdair is Canadian and wishes to enter the UK for a two week holiday. Canada is not listed at Appendix 1 of the Immigration Rules and Alasdair is not therefore a visa national. A visit visa is granted for six months or less and the rule does not require that entry clearance is obtained.

Alasdair does not require entry clearance before he travels.

Maria is Colombian and wishes to enter the UK for a one year computing course. Colombia is listed at Appendix 1 and so Maria is a visa national. In addition, she is seeking entry for a period exceeding six months and the Tier 4 (General) rule does specify that prior entry clearance is required.

Maria very definitely requires entry clearance before she travels.

A non-visa national can, optionally, apply for entry clearance prior to travel, and if refused on arrival at port will then potentially have an in-country right of appeal. This would be very useful advice to give to a person who is at risk of refusal on arrival, for example because of a poor immigration history which is discernable by an Immigration Officer from his or her current passport.

Entry clearance is sought from an Entry Clearance Officer ('ECO') at a British embassy, High Commission or consulate in the country of origin. If granted, it takes the form of a sticker or vignette in the holder's passport or an Identity Card for Foreign Nationals, which is then presented to an Immigration Officer on arrival.

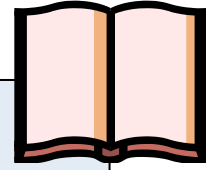
**Top tip**

British High Commissions exist in Commonwealth countries, British embassies in non-Commonwealth countries and consulates are just smaller posts away from the main High Commission or embassy in a given country.

Usually, by virtue of the Immigration (Leave to Enter and Remain) Order 2000, an entry clearance will also include the grant of leave to enter, which becomes effective on entry to the UK. However, on arrival an Immigration Officer may examine the leave to enter and has the power to cancel the entry clearance which contains the leave to enter under certain limited circumstances:

- False representations or material facts not disclosed, with or without knowledge, in writing or orally
- Change in circumstances since entry clearance issued
- Restricted returnability, medical grounds, criminal record, subject to a deportation order or exclusion conducive to public good

See 1971 Act, Schedule 2, paragraph 2A and also the immigration rules at r.321).



Example

Tasneem applied for entry clearance as a Tier 4 Migrant, a student. The application was granted. While Tasneem was making arrangements to travel to the UK, though, her mother fell ill. She felt unable to leave her and did not travel.

Her mother recovers and 4 months later Tasneem seeks entry to the UK. In the meantime, her course has started and her college has informed the UK Border Agency that she has not enrolled.

When Tasneem arrives in the UK she is stopped by an Immigration Officer and refused entry, even though she has a valid entry clearance. The basis of the refusal is Immigration Rule 321 because there has been a change of circumstances since the entry clearance was granted.

Tasneem would have a right of appeal from within the UK if she wanted to exercise it.

There are a number of other relevant provisions relating to entry clearance:

- Entry clearance applications for any purpose other than a visit must be made in the overseas post where the applicant resides or the nearest designated post if there is none
- Entry clearance can be revoked if the Entry Clearance Officer or an Immigration Officer decides that it has been obtained through false representations or if material facts were not disclosed or if a change of circumstances since its issue removes the basis of the person's claim to enter (unless that change of circumstances is that someone is over the minimum age requirement when they met that requirement at the time the application was made: see immigration rule r.27).

Many of the busiest entry clearance posts now employ an agent or courier firm to accept and process applications before forwarding them to the entry clearance post for decision.

Leave to enter or remain

There is no real difference between leave to enter and leave to remain other than where it is granted, either at port (e.g. Dover, Heathrow) or in-country. Leave to enter will be granted on initial entry, and then if a further period of leave is sought and granted it will be called leave to remain. Once limited leave to enter or remain has been granted and remains current, the holder can depart from and re-enter the UK using that leave.

Leave can either be granted for a specific period, in which case it is referred to as limited leave, or can be granted for an indefinite period. Indefinite leave is usually encountered as Indefinite Leave to Remain, or 'ILR'. This may also be referred to as settlement, as that is what it amounts to. However, there are some immigration categories in which Indefinite Leave to Enter is granted right at the outset.

Where a period of limited leave is granted and a further period of leave is sought, the application made is technically referred to as an extension application. That is the correct terminology irrespective of the immigration category for which the person seeks further leave. If granted the extension may be referred to as an extension of stay or an extension of leave.



Top tip

When immigration lawyers refer to extensions of leave, they are often referring to an extension of leave in the same immigration category. For example, a Tier 4 student will be granted a limited period of leave to enter initially and then have to apply for further periods of leave to remain if undertaking further studies. Immigration lawyers often refer to an application for an extension of leave in a different immigration category as a variation application or as 'switching'. For example, a Tier 4 student might meet the love of his or her life, get married and want to apply for leave to remain as a spouse.

Immigration categories

When entry clearance or a form of leave is sought, it will usually be sought for a specific purpose, such as to study, to work or to live with a family member. A document referred to as the Immigration Rules sets out the different purposes for which entry to the UK can be sought.

The Immigration Rules are a unique form of legislation that the Secretary of State is authorised to change by a relatively simple Parliamentary procedure called the negative resolution procedure. Essentially, any change to the rules is simply laid before Parliament and then automatically becomes law. These changes are called Statements of Changes. An objection can be made by a Member of Parliament but the objection triggers a debate, it does not actually prevent the rules become law.

The current set of Immigration Rules are officially called HC 395. They were first introduced in 1994 and have been very heavily amended in subsequent years. At the moment amendments occur around four or five times per year. The number

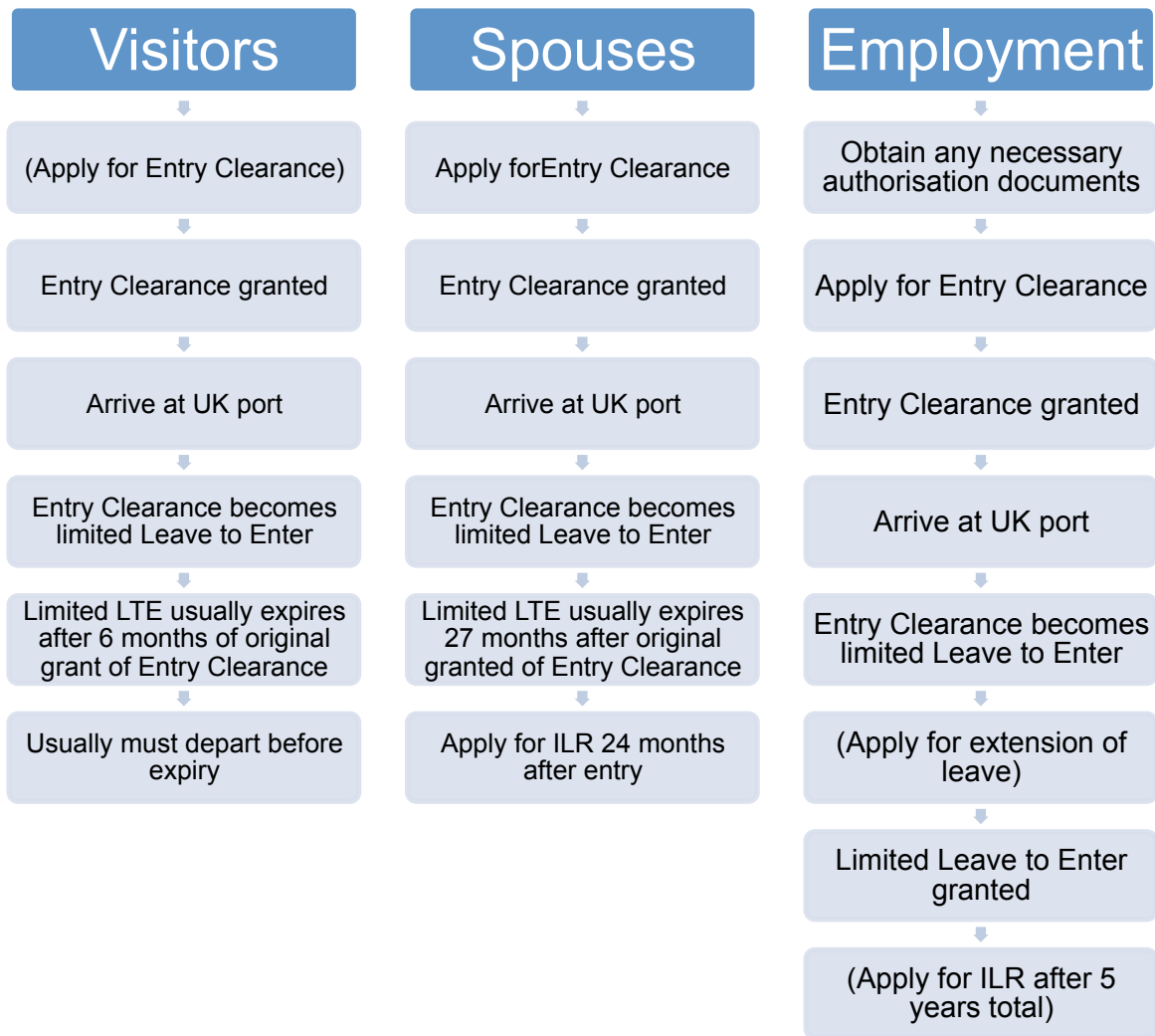
of amendments and the different drafting techniques used by different draughtsmen over the years means that there are many features to the rules that might kindly be referred to as quirks.

The following chapter and the chapter on the Points Based System examine the specific categories in more detail. Common examples include:

- Spouses and partners
- Visitors
- Students (Tier 4 Points Based System)
- Workers (Tiers 1 or 2 Points Based System)

However, there are many categories under the rules, some of which only exist for a relatively small number of immigrants.

The following flowcharts provide examples of how the different processes discussed above fit together into actual applications for entry and stay. The examples all assume that everything goes according to plan for the potential immigrant – refusals, appeals and removals are not dealt with here. The employment column is based on the general procedure but the introduction of the Points Based System means that specific reference to Tiers 1, 2 and 5 should be made dependant on the applicant's circumstances.



Brackets have been used around some of the applications as they may not apply in all cases.

Sources of law

It is essential as a practitioner to be able to navigate with ease around the various pieces of legislation that govern immigration and asylum law. Immigration control is maintained through primary legislation, secondary legislation, the Immigration Rules, Home Office policy, commitment to obligations under international conventions and the discretion of the Secretary of State to admit a person who does not satisfy any of the above.

Primary legislation

Immigration Act 1971

- Continues to provide the framework of immigration control
- All persons without a right of abode are subject to immigration control (s.1)
- Defines who has a right of abode (amended by other legislation) (s.2)
- Provides that entry/stay is regulated by the grant of leave to enter or remain for either a limited or indefinite period (s.3)
- Provides for regulation and control of entry into and stay in the UK by the Secretary of State through powers (delegated to entry clearance officers and immigration officers and under-secretaries at the Home Office) to grant (s.4):
 - Entry clearance
 - Leave to enter
 - Leave to remain/further leave to remain
 - Make a decision to remove
 - Make a decision to deport
 - Make a decision to revoke a deportation order
- Provides for when a person may become liable for deportation (s.3(5))
- Gives the power to remove only to certain countries or territories – specified in para 8 of Schedule 2
- Defines various terms including illegal entrant (s.33)
- Provides for the power to examine passengers and detain passengers (Schedule 2)
- Provides for the grant of bail (Schedule 2)

British Nationality Act 1981

- Redefined nationality and citizenship and limited 'right of abode' to newly created British citizens (replacing Citizens of the United Kingdom and Commonwealth with six new categories of nationality and citizenship). While the Act may at first glance appear indecipherable, patience will be rewarded:
 - s.1 defines acquisition by birth or adoption
 - s.2 defines acquisition by descent
 - s.3 sets out the provisions for the registration of minors born outside the UK
 - s.6 and Schedule 1 set out the criteria for acquisition by naturalisation
 - s.4 to s.4C sets out other registration provisions
 - s.11 defines who acquired citizenship on commencement of the Act
 - s.14 defines a 'British citizen by descent' and, in effect, also 'otherwise than by descent'. The distinction is important, as will be seen in the nationality law chapter.

Immigration Act 1988

- Introduced carrier liabilities for the first time but now of little ongoing significance

Asylum and Immigration Appeals Act 1993

- Incorporated UN Convention Relating to the Status of Refugees 1951 and 1967 Protocol into UK law for first time. Gave right of appeal on refugee grounds to illegal entrants.

Asylum and Immigration Act 1996

- Includes s.8, the criminal offence of employing a person with no right to work (recently amended through 2002 Act enabling provision). On commencement of the relevant provisions of the 2006 Act (see below) this will be superseded.

Special Immigration Appeals Commission Act 1997

- Created SIAC for security-sensitive appeals

Human Rights Act 1998

- Incorporated ECHR into UK law. However, the HRA was 'enabled' in immigration and asylum appeals in immigration cases by the 1999 Act and the 2002 Act. Separate remedies are available directly under the HRA, though, given the right factual situation.

Immigration and Asylum Act 1999

- Came into force between November 1999 and October 2000. It provided a new framework for immigration control but has been largely superseded except in certain important respects:
 - amends IA 1971 to provide for entry clearance to have effect as leave to enter (s.3)
 - provides powers of administrative removal for persons (s.10)
 - provides for the registration of immigration advisors through the Office of the Immigration Services Commissioner (OISC), including the introduction of related criminal offences and enforcement powers
 - provides for the dispersal of asylum seekers
 - provides for suspicious marriages to be reported
 - creates new offences relating to facilitating/harboursing illegal entrants and increases powers of arrest and power to search premises and persons

Nationality, Immigration and Asylum Act 2002

- Came into force largely on 1 April 2003, although some provisions were introduced as early as November 2002. Changes include:
 - sets out initial rights of appeal to the immigration tribunal
 - provides for certain asylum claims to be certified as manifestly unfounded and that the right to challenge such decisions is to be exercised from abroad only (commonly but rather obscurely referred to as non-suspensive appeals because removal is not suspended) (s.94)
 - extends immigration offences and penalties

- brings in a power to revoke British Citizenship (s.4 amending s.40 British Nationality Act 1981)
- provides for establishment of accommodation centres and removal centres (ss.16-42)
- allows for revocation of indefinite leave to remain (s.76)
- introduces a new framework of appeal rights and specific grounds of appeal (ss.81-83)
- grounds of appeal (s.84)
- limitations on appeal rights (ss.88-99)
- gives domestic life to Article 33(2) of the Refugee Convention (s.72)
- introduces provisions for juxtaposed controls with EEA countries

Asylum and Immigration (Treatment of Claimants etc) Act 2004

- Radically changed the old system of appeals via the introduction of the 'single' tier, replacing the Immigration Appellate Authority system of Adjudicators and the Immigration Appeal Tribunal with the now also defunct Asylum and Immigration Tribunal, populated by Immigration Judges, Designated Immigration Judges and Senior Immigration Judges. This came into effect in April 2005. Other provisions included:
 - a controversial permission to marry requirement for overseas nationals which was successfully challenged in the House of Lords case of SSHD v Baiai & Ors (s.19-25)
 - introduced important new immigration criminal offences, including arriving without an immigration document (s.2), not co-operating with removal (s.35) and trafficking (s.4)
 - introduced statutory negative presumptions about the assessment of credibility in asylum cases (s.8)
 - abolished back payments of income support and other benefits for those recognised as refugees, as well as numerous other provisions relating to welfare and asylum support
 - introduced various regulation-making powers (not yet used at time of writing), including to partially designate countries or groups for 'non-suspensive' appeals
 - introduced powers for electronic monitoring, or 'tagging', as a form of reporting restriction for those on bail or temporary admission

Immigration, Asylum and Nationality Act 2006

- The major change introduced in this legislation was the abolition of appeal rights against entry clearance decisions for students and employment categories, but this has come into effect gradually in line with the Points Based System (s.4). Most other changes were relatively minor:
 - amended appeal rights for those recognised as refugees where a decision is made that they no longer qualify for international protection (s.1)
 - adjustments to s.104 of the 2002 Act to prevent the statutory abandonment of certain types of appeal ('upgrade' appeals for full refugee status and racial discrimination claims) (s.9)

- introduces a new regime of civil penalty notices and fines for employers who employ immigrants without permission to work as well as a new criminal offence to replace s.8 1996 Act (s.15 to 26)
- various provisions relating to information sharing and other enforcement powers (s.27 to 42)
- removes registration as a British citizen as of right by introducing a good character requirement (s.58)

UK Borders Act 2007

- The changes instituted under the Act generally have little impact on day to day casework:
 - the exception to this are the new provisions on automatic deportations, subject to a human rights exemption and other exemptions
 - provision for biometric immigration documents
 - provision for imposing conditions on reporting and residence on those granted limited leave
 - enhanced powers of detention for immigration officers

Criminal Justice and Immigration Act 2008

- Sections 130-137 of this Act provide for a special immigration status for individuals who cannot be removed to their country of origin because of human rights concerns, but who have committed crimes falling under s.72 NIAA 2002 or are excluded from refugee status by virtue of Article 1F of the Refugee Convention. Spouses, civil partners and children may also be subjected to the same status. The status can prohibit the person from working, subject them to heavy reporting and residence conditions and leaves them on a reduced welfare support package.

Tribunals, Courts and Enforcement Act 2007

- Creates a unified tribunal structure consisting of the First Tier Tribunal and the Upper Tribunal. Each is divided into different speciality 'chambers'.
- Immigration adjudication was belatedly merged into the unified tribunal structure as of 2010 by the 2009 Act (below). An Immigration and Asylum Chamber was created in both the First Tier and Upper Tribunals.
- The right of appeal to the Court of Appeal is curtailed in comparison to the pre-existing appeals structure

Borders, Citizenship and Immigration Act 2009

- New citizenship provisions were made in this Act, but the present Government has stated that these provisions will never be commenced.
- Abolished Asylum and Immigration Tribunal and merged immigration adjudication into the unified tribunal structure.
- Power to transfer fresh claim judicial reviews to the Upper Tier of the two Tier Tribunals Service
- Powers to restrict what studies a person can undertake in the UK

- A new duty to safeguard and promote the welfare of children: section 55

Secondary legislation

Asylum and Immigration Tribunal (Procedure) Rules 2005

- Regulates appeal procedure in the Immigration and Asylum Chamber of the First Tier Tribunal, including time limits for lodging appeals. This is the place to start your search when look for anything relating to appeals procedure.
- See the chapter on appeals law for more information

Asylum and Immigration Tribunal (Fast Track Procedure) Rules

- Applies specifically to Harmondsworth and Yarl's Wood super-fast-track cases.
- As with the general rules, these became the rules for fast track appeals in the IAC of the First Tier Tribunal in February 2010

Tribunal Procedure (Upper Tribunal) Rules 2008

- Governs appeals procedure in the entire Upper Tribunal, including the Immigration and Asylum Chamber

Immigration (European Economic Area) Regulations 2006

- Transposes into domestic law EC freedom of movement law and regulates appeal rights and residence rights for EEA nationals and related 3rd country nationals.

Immigration Orders

- There are many Orders made under secondary legislation powers that can have a major effect on immigration law. To take but one example, the Immigration (Leave to Enter and Remain) Order 2000 simplified immigration control for persons with visas. Under this Order, entry clearance takes effect as leave to enter if it specifies the purpose for which the holder wishes to enter the country and if it is endorsed with the conditions to which it is subject. Visit visas operate as leave to enter on an unlimited number of occasions for so long as they are valid (for six months if six months or more remain of the visa's period of validity; or for the visa's remaining period of validity, if less than six months. Leave given for more than six months, or which was conferred by entry clearance (other than visit visas), does not normally lapse when a person leaves the Common Travel Area.
- There are many, many other orders, the most useful of which are included in the secondary legislation section of Phelan and Gillespie's Immigration Law Handbook.

Commencement Orders

- Bring into force the specific provisions of primary and sometimes secondary legislation.

Immigration rules

Immigration Rules HC395

- Unique legal status different to secondary legislation
- Regulates who may and may not be granted entry clearance and/or leave to enter or remain.
- HC395 is not actually law or secondary legislation as such and the SSHD retains discretion to allow entry outside HC395. SSHD cannot act more restrictively than is set out in HC395 as, assuming there is a right of appeal, the decision will be overturned on appeal or failing that would be susceptible to judicial review. The Immigration Rules are made under section 3(5) of the 1971 Act and are subject to the 'scrutiny-lite' negative resolution procedure in Parliament: statements of changes are made in Parliament and if no objections are raised within 40 days, the statements take legal effect.

Statements of Changes

- Periodic Statements of Changes are introduced by the negative resolution procedure in Parliament to make changes to the main immigration rules.

Policies and concessions

The UK Border Agency publishes policies on how the Immigration Rules and other provisions will be interpreted by UKBA staff and on discretionary entry outside the rules. Concessions usually relate to entry outside the rules (which is possible because of the Secretary of State's discretion to allow entry outside the Rules). Examples to be found at the UKBA website are Immigration Directorate Instructions (IDI), Asylum Policy Instructions (API), Entry Clearance Guidance (ECG) and Nationality Instructions (NI).



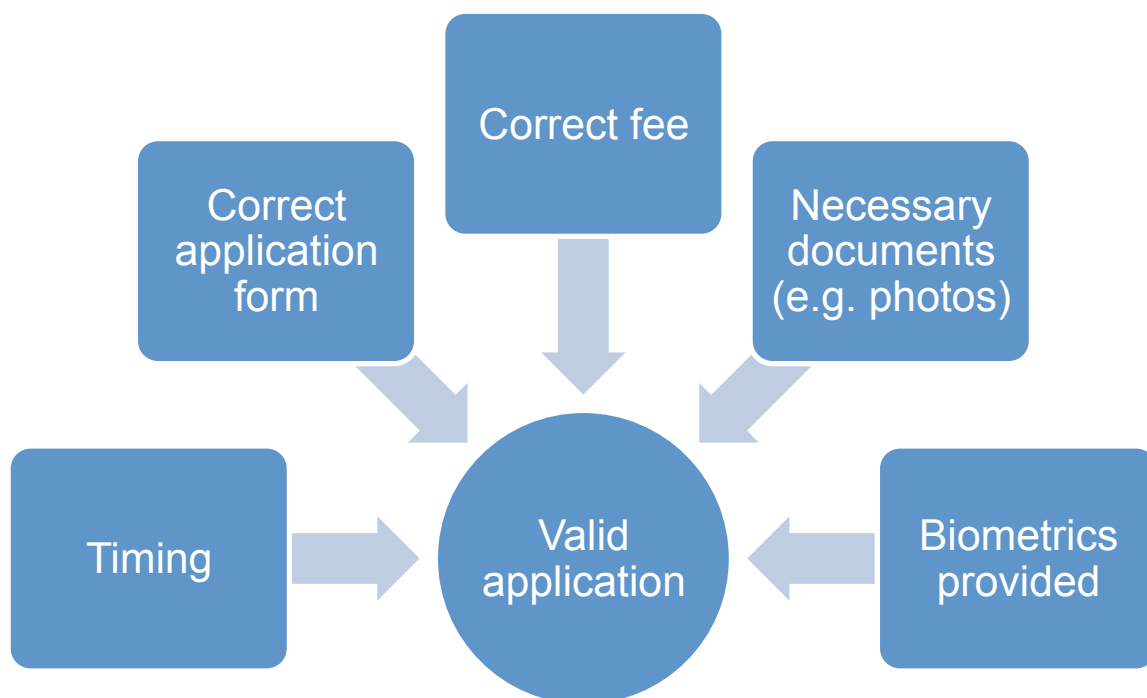
Top tip

HJT Training and the Immigration Law Practitioners Association jointly publish an invaluable compendium of historic Home Office policies and also regularly run a joint training session with materials to keep the publication up to date.

See the HJT Training website for further information.

Making an application

There are a number of elements to making a valid application:



As discussed below, if an application does not comply with the required formalities, even down to wrongly sized photographs, then there may be very serious consequences for the applicant.

Timing

Most immigration rules for in-country extensions of stay (whether one is applying in the same category or a different category to one's existing category) require that the applicant possess current leave to enter or remain. An illegal entrant or

overstayer is thereby prevented from regularising his or her position by, for example, applying for leave to remain as a spouse.

This is not always the case, though, and an astute and effective immigration lawyer will realise that some immigration rules are silent on this issue, which means that regularisation is possible by certain routes.

Leave required

- e.g. rules 248(vii), 284(i) and 295D(i)

Leave not required

- e.g. rules 289A and 317
- See also the Points Based System

As more fully discussed in the chapter on the Points Based System, PBS switching provisions require that an applicant 'must have, or have last been granted, entry clearance, leave to enter or remain'.

Note also that some rules require not only that the applicant possess current leave but also that the leave was 'given in accordance with any provisions of these Rules', which prevents those in possession of Discretionary Leave or other leave outside the rules from applying in such a category.

Automatic extension of leave

The Home Office will not normally consider applications for extension of leave until shortly before a person's leave runs out. Given that the Home Office sometimes takes several weeks or even longer to make a decision, this often results in the person's leave apparently expiring while the application is under consideration at the Home Office.

A further difficulty arises with negative decisions by the Home Office where the person appeals. If the Home Office has refused leave, does this mean that while the person is appealing he or she is left with no leave and is an overstayer?

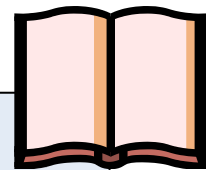
Section 3C of the Immigration Act 1971 was enacted to deal with these problems. It automatically extends leave while an in-time and valid application is pending and then also if an appeal is lodged and remains pending. It also extends the conditions attached to the previous grant of leave.

Effect of an invalid application

Rejection of an invalid application is not treated as a refusal of leave. This can have very serious consequences. The effect of the rejection of an application as invalid is that no application has been made.

If the application is resubmitted after leave expires and is rejected, the right of appeal is lost and the applicant has become an overstayer – potentially a

criminal offence and also something that can cause problems later under the general grounds for refusal. The decision on whether an application is valid is made by the Initial Consideration Unit or, for those attending in person, the Public Enquiry Office. The forms and accompanying documents are checked for compliance, and the merits of the application are disregarded at that stage. Invalid applications are returned to applicants or their advisers, endorsed with the defects which need remedying, or enclosing appropriate forms if the application was incorrectly made by letter. Clearly, it is vitally important that the application is validly made to the satisfaction of the Initial Consideration Unit or Public Caller Unit. Note that mistakes are sometimes made and valid applications are sometimes rejected as being purportedly invalid.



Example

Graeme has been studying in the UK for eight years. He has always complied with immigration requirements and his current course will end after another two years, meaning that he would be eligible to apply for settlement after 10 years of continuous lawful residence (see next chapter).

However, when he makes his latest immigration application he forgets to sign the cheque. He submits the application on 20 January. His leave expires on 31 January. The Home Office return the application to him on 28 February and notify him that it was invalid.

Because Graeme never made a valid application, his old leave was never extended by s.3C 1971 Act. He has unknowingly become an overstayer and is committing a criminal offence by remaining. Any future application will not carry a right of appeal and he is no longer eligible for residence after 10 years.

These serious consequences are slightly mitigated by the judgment in *JH (Zimbabwe) v SSHD* [2009] EWCA Civ 78. The Court of Appeal held that an application made on the wrong form (e.g. on a SET rather than an FLR form) was in fact a valid immigration application, even if it was ultimately doomed to fail. The Court went on to find that it is possible to vary an application by applying for a different form of immigration status on a different application form, up until the time that a decision is made by the Secretary of State on the application. It had previously been thought that once leave was extended automatically by section 3C Immigration Act 1971, it was not possible to vary an application.

Application forms and fees

Out-of-country applications

Information on entry clearance applications, processing times and local administrative arrangements for submitting an application and fee has historically been spread out over a number of websites: the main UK Border Agency website, the UK Border Agency visa website and the relevant Foreign and Commonwealth embassy and High Commission websites. At the time of writing the UK Border Agency appears to be in the process of consolidating the available information onto the main UKBA website.

Entry clearance applications are made on one of the Visa Application Forms (VAFs) that can be downloaded free of charge from the UK Border Agency visa website. An application is not legally made unless accompanied by the appropriate fee in local currency: r.30 of HC395. On-line applications are becoming increasingly utilised by Visa Application Centres (VAC). An applicant should check the application procedure for the specific VAC that they wish to apply to for specific guidance. Where online facilities are available, it is usual that the application is completed online and then printed for despatch, either by post or in person to the VAC, accompanied by the supporting documentation.

The principle application forms are as follows:

- VAF1A-K: different types of visitor
- VAF2: employment
- VAF3A: prospective student
- VAF4A: settlement
- VAF4B: returning resident
- VAF5: EEA family permit
- VAF6: Direct Airside Transit
- VAF7: right of abode
- VAF8A: Overseas Territories Visa (for visits to OTs)
- VAF8B: Commonwealth Country Visa (for visits)
- VAF9: Points Based System Migrant (plus one of the relevant PBS appendices relating to a specific category)
- VAF10: Points Based System Dependent

The fees for the principal types of entry clearance application as of 6 April 2011 are as follows:

Visa	Fee
Short term visit	£76
Settlement	£810
Dependent relative	£1,814
Certificate of Entitlement	£265
Tier 1	£800
Tier 1 Post Study Work	£474
Tier 2	£400
Tier 4	£255
Tier 5	£190

The above list is not comprehensive and reduced fees sometimes apply for CESC nationals. EEA nationals and their family members do not need to pay a fee for immigration applications, nor do the pre-existing families of refugees.

In-country immigration status applications

The main non-business, non-EEA forms are as follows:

Form LTR (Multiple)

- For multiple applications where the same person is paying: Up to 25 people may be included. It is intended for use by legal representatives or advisers (e.g. student or school advisers) but can be used by anyone wanting to make multiple leave to remain applications and make one payment. It is not to be used in work permit applications where there are already arrangements for multiple applications, nor for dependents.

Form NTL (No Time Limit)

- Use this form to apply for an indefinite leave stamp (No Time Limit) to be endorsed in a new passport or travel document of a person who already has indefinite leave to enter, or to remain in the United Kingdom

Form FLR (M)

- Use this form to apply for an extension of stay as the spouse, civil partner or unmarried partner of a person present and settled here

Form FLR (O)

- Use this form to apply for an extension of stay for applications in any of the following categories:
 - Visitor

- Private servant in a diplomatic household
- Overseas qualified nurse or midwife
- Long residence
- Other purposes/reasons not covered by other application forms, including prospective student

Form FLR (BID)

- Use this form to apply for an extension of stay as one of the following:
 - Academic visitor
 - Domestic worker in a private household
 - UK ancestry
 - Visitor for private medical treatment
 - Dependent of a person who has limited leave in another capacity as confirmed in a biometric immigration document

Form FLR (BUS)

- Use this form to apply for an extension of stay as a Retired Person of Independent Means or as a Representative of an Overseas Business

Form HPDL

- Use this form to apply for an extension of stay if refused asylum but granted Exceptional Leave to Remain, Humanitarian Protection or Discretionary Leave and seeking an extension of that leave

Form SET (M)

- Use this form to apply for indefinite leave to remain in the United Kingdom as the spouse (husband or wife), civil partner or unmarried partner of a person who is present and settled

Form SET (DV)

- This form is used specifically for applying for settlement under the rules for victims of domestic violence whose relationships have broken down during the probationary period because of that domestic violence

Form SET (F)

- Use this form to apply for indefinite leave to remain as a family member (other than husband or wife or unmarried partner) of a person present and settled in the United Kingdom

Form SET (BUS)

- Use this form to apply for indefinite leave to remain as a Retired Person of Independent Means or as a Representative of an Overseas Business

Form SET (O)

- Use this form to apply for indefinite leave to remain in the United Kingdom when approaching five years of continuous leave to remain in the United Kingdom in one of the following categories:
- work permit holder
 - employment not requiring a work permit
 - businessperson, innovator or investor
 - highly skilled migrant, highly skilled migrant under the terms of the HSMP indefinite leave to remain (ILR) judicial review policy document
 - self-employed lawyer
 - writer, composer or artist
 - Tier 1 migrants
 - Tier 2 migrants
 - UK ancestry
 - ex-HM Forces
 - long residence in the UK
 - bereaved partner
 - other purposes/reasons not covered by other application forms

These forms must be accompanied by the correct fee. Fees are not applied to or are reduced for EEA applications or asylum or certain human rights applications or applications from citizens of countries that are signatory to the European Social Charter. The most commonly encountered fees, as of 6 April 2011 are as follows:

Application	Principal fee	Dependant fee
ILR postal	£972	£486
ILR PEO	£1250	£675
ILR dependant relative postal	£1680	-
ILR dependent relative PEO	£2050	-
LTR non student postal	£550	£275
LTR non student PEO	£850	£425
Tier 1 postal	£1000	£500
Tier 1 PEO	£1300	£650
Tier 1 (PSW) postal	£594	£297
Tier 1 (PSW) PEO	£918	£459
Tier 2 postal	£550	£275
Tier 2 PEO	£850	£425
Tier 4 postal	£386	£193
Tier 4 PEO	£702	£351
Tier 5 postal	£190	£95
Tier 5 PEO	£648	£324

Some individuals are exempt from paying fees for applications:

- people applying for Indefinite Leave to Remain on the grounds of domestic violence where, at the time of making the application, the applicant appears to be destitute;
- children under 18 and receiving local authority support;
- persons granted limited leave to remain whilst they were under 18 on the rejection of their claim for asylum is now applying for further leave to remain outside the immigration rules;
- nationals of Bulgaria, Romania and Turkey and their dependants who are applying for leave to remain under the terms of a European Community Association Agreement;
- rejected asylum seekers who are seeking extensions of leave to remain in the United Kingdom outside the immigration rules;
- those applying for leave to remain where the basis of their claim is asylum or Article 3 ECHR.
- EEA nationals seeking residence permits or permanent residence, and their family members applying under EC law.

Other mandatory requirements

The Immigration Rules allow for a particular application form to be mandatory and for certain information to be provided. The requirements are set out at rules 34 to 34D. These are the mandatory requirements and must be complied with for the application to be valid.

Examples of mandatory requirements

- The payment of a specified fee
- Inclusion of specified biographical information
- Attendance at a UKBA appointment
- Photographs as described on the form and in guidance
- Completion of the 'confirmation box' and other sections of the form said on the form to be mandatory
- Compliance with biometric requirements, i.e. attending for photo and fingerprinting

It may in some circumstances be possible to draw a distinction between mandatory and directory requirements on a given form if there is a dispute about whether a valid application has been made.

Further representations

There are many circumstances in which it will be appropriate to make further representations, either in the form of a 'covering letter' at the time of the application or after the application has been made. This is true in asylum and in and out of country immigration cases.

In late 2009 UKBA surprised immigration lawyers by introducing a new requirement for an asylum claimant to make any further representations in an asylum case in person at what was formerly the Liverpool Asylum Screening Unit. At the time of writing this requirement was under challenge because of the difficulties it causes many asylum applicants, who are simply unable in practical terms to make the expensive, long and unfunded journey to Liverpool.

Further representations should generally be as short and to the point as possible, as ECOs and Home Office caseworkers are unlikely to read or be persuaded by long-winded representations. The representations should draw out the key points, explain any unusual circumstances and explain the relevance of any non-standard documentation enclosed with the application. Direct references to or citation of case law should generally be kept to a minimum but references to the APIs, IDIs or other UKBA policy documents are likely to be highly persuasive – and also lay the foundations for a later judicial review should this become necessary.

There is no concrete legal obligation on the UK Border Agency to respond to representations within a certain time frame. A formal application may sometimes be the best way to trigger a decision by UKBA.