

ILPA information sheet

Information sheets provide general information only, accurate as at the date of the information sheet. Law, policy and practice may change over time.

ILPA members listed in the directory at www.ilpa.org.uk provide legal advice on individual cases. ILPA does not do so.

The ILPA information service is funded by the Joseph Rowntree Charitable Trust.

An archive of information sheets is available at www.ilpa.org.uk/infoservice.html

Steve Symonds ILPA Legal Officer 020-7490 1553 steve.symonds@ilpa.org.uk

Immigration Law Practitioners' Association www.ilpa.org.uk 020-7251 8383 (t) 020-7251 8384 (f)

General Grounds for Refusal – Updated

26th July 2012

The Immigration Rules set out the legal framework for considering whether a person may obtain permission (leave) to enter or remain in the UK. Part 9 of the Rules sets out general grounds for refusing the applications of those seeking to come to (enter) the UK or stay (remain) in the UK.

In 2008, significant changes were made to Part 9 of the Rules. These changes were explained in three information sheets on “Immigration Rules – general grounds” in February, March and May 2008. Further changes were made in April 2011, and the effect of these changes was brought together in the March 2011 “General Grounds for Refusal” information sheet [<http://tinyurl.com/72uoq4n>]. Further changes have now been made (or are to be made). This information sheet replaces the March 2011 information sheet with up to date information on general grounds for refusal.

General grounds for refusal

These are grounds (or reasons) that apply whatever the type of application to enter or remain in the UK that is being made. For example, someone hoping to come to the UK to work may have his or her application refused on these grounds in just the same way as someone else hoping to come to the UK to study. However, there are some important differences for people seeking to come to or stay in the UK to be with family members (see below).

Some of the grounds are mandatory – i.e. if the ground applies, the application must be refused. Some of the grounds are discretionary – i.e. if the ground applies, the application may or may not be refused. Not all of the general grounds for refusal are explained here. The information here is mostly concerned with what are sometimes referred to as “re-entry bans”, which provide one reason why some applications are refused on mandatory grounds.

Re-entry bans

The general grounds for refusal include grounds that establish re-entry bans – i.e. that someone must be refused permission to return to the UK for a specified period of time. In fact, while the term “re-entry bans” is used, the general grounds include a provision banning certain people from coming to the UK who have not previously entered the country. The scheme of the re-entry bans in the Immigration Rules is essentially set out in two particular paragraphs of the Rules – 320(7A) and 320(7B). These are explained below.

Paragraph 320(7A)

This relates to applications to come to the UK. (Similar provisions are made in other paragraphs for applications to stay in the UK.) If someone makes a false assertion in his or her application, includes a false document or fails to mention something that is relevant to the application, that application must be refused.

Paragraph 320(7B)

This relates to applications to come to the UK, and sets out the re-entry bans. It sets out types of behaviour that will lead to a re-entry ban, and then sets out how long the ban is to last. The types of behaviour that will lead to a re-entry ban are:

- using deception in an application to come to or stay in the UK
- overstaying (i.e. staying in the UK after someone's permission to be in the UK has come to an end)
- breaching any condition of permission to be in the UK (e.g. working or claiming benefits when not permitted to)
- illegally entering the UK

The length of a re-entry ban will be the longer period of the following:

- if the person left the UK voluntarily at his or her own expense, **12 months** from when he or she left the UK (but if he or she overstayed for no more than 28 days*, and has not done any of the other behaviours listed above, there will be no re-entry ban)
- if the person left the UK voluntarily but at some cost to the UK (e.g. made an assisted voluntary departure), and did so within 6 months of having been given notice of the UK Border Agency's intention to remove him or her, or within six months of exhausting his or her appeal rights, **two years** from the date of his or her departure from the UK
- if the person left the UK voluntarily but at some cost to the UK (e.g. made an assisted voluntary departure), but not within either of the six months periods referred to above, **five years** from the date of his or her departure from the UK
- if the person used deception or was removed from the UK (i.e. left involuntarily), **10 years** from the date of that deception or his or her departure from the UK

** From 1 October 2012, the 28 days period relating to overstayers will be extended to 90 days. See this month's "Overstayers" information sheet.*

Exceptions

Paragraph 320(7B) makes clear that where the person was under the age of 18 years when he or she breached UK immigration laws, this will not cause him or her to be subject to the re-entry bans.

Part 9 of the Rules (including paragraphs 320(7A) and 320(7B)) do not apply to applications under Appendix FM (which relates to family migration) – see this month's "Family Migration – Changes to Immigration Rules 1" information sheet [<http://tinyurl.com/blz7zg6>]. Appendix FM does include general grounds for refusal of applications covered by that Appendix. It does not include any re-entry bans as described here.

Ministers have also announced concessions outside the Rules (which are reflected in UK Border Agency policy guidance) so that the following should not be subjected to the re-entry bans:

- someone who has been accepted by the UK Border Agency to be a victim of trafficking
- someone who was in the UK after 17 March 2008 and left the UK voluntarily before 1 October 2008

Paragraph 320(11)

This relates to applications to come to the UK. It is one of the discretionary general grounds for refusal. Someone who has previously breached UK immigration laws, but is not subject to the re-entry bans because of any of the exceptions listed above, may nonetheless be refused permission to come to the UK because of that previous breach of UK immigration laws. This will depend on how serious that previous breach was.