

October 2021

Home Office Concession to the Family Immigration Rules for Granting Longer Periods of Leave and Early Indefinite Leave to Remain - 21 October 2021

Quicker route to Indefinite Leave to Remain for Young Adults between the age of 18 and 25 who are on a 10-Year Route to Settlement under the Family Life Provisions of the Immigration Rules

Background:

The Family Provisions of The Immigration Rules and the Exceptions to the Requirements:

Appendix FM, the family provisions of the Immigration Rules, provide for applicants who fulfil all the requirements to apply for settlement/indefinite leave to remain after 5 years.

Applicants and their dependents who do not fulfil all the requirements of Appendix FM, will be granted 30 months leave, on a 10-year route to settlement/indefinite leave to remain if they fulfil the following requirements:

- a) It would be unreasonable for a child who has lived in the UK for 7 years to leave or
- b) There are insurmountable obstacles to family life with a partner outside the UK or
- c) There are exceptional circumstances which would render refusal of leave a breach of Article 8 of the European Convention of Human Rights

Those who are granted leave on this basis will need to continue to extend their 30 months leave, and will only be entitled to apply for indefinite leave to remain after a continuous period of at least 120 months in the UK with such leave.

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Reason for the Policy Concession:

According to the Home Office, the purpose of the 10-year settlement route is to serve as an incentive to encourage compliance with the core requirements of the Immigration Rules and encourage integration into the society. The longer timeframe signals that a person should not benefit from the same entitlement as those who are compliant with the family provisions, and who are entitled to indefinite leave to remain after 5 years.

However, it is recognized that in the case of applicants who were either born in the UK or entered as children below 18, but are now young adults aged 18-24, the public interest factors that underpin the 10-year settlement/indefinite leave to remain policy, may be less relevant. Where this is the case, applicants should be able to settle/be granted indefinite leave to remain after 5 years continuous leave under the 10-year route.

Who is eligible for consideration under the Policy Concession?

To be eligible to be considered under the Policy Concession an applicant must at the date of application for further permission/leave to remain:

1. Be aged 18 years or above and under 25 years of age and has spent at least half of his/her life living continuously in the UK (discounting any period of imprisonment);
2. Have either been born in or entered the UK as a child;
3. Have held five years limited leave; and
4. Be eligible for further leave to remain under paragraph 276ADE (1) of the Immigration Rules and have made an application under those rules.

Relevant Considerations:

In considering whether to grant indefinite leave to remain under the concession, all available evidence will be taken into account. The question that will be addressed is whether it remains proportionate to expect the applicant to complete the longer 10-year route to settlement. Relevant considerations include (but are not limited to) the following:

- the person's age when they arrived in the UK

- the length of their residence in the UK (including unlawful residence)
- the strength of their connections and integration to the UK
- whether unlawful residence in the past was the result of non-compliance on the part of the applicant or their parent/guardian whilst the applicant was under the age of 18
- efforts made to engage with the Home Office and regularise status
- any leave currently held and length of continuous lawful leave
- any period of any continuous leave held in the past
- whether granting limited leave to remain will have a detrimental impact on the person's health or welfare
- The public interest of the 10-year settlement route in signalling that a person should not benefit from the same entitlement as those who are compliant.

Conclusion:

The Policy Concession is a welcomed development.

Applicants who were either born in the UK or entered as children below 18 but are now young adults aged 18-24, and who were granted permission to stay as dependents of their parent(s) under the 10-year route to settlement, will all potentially benefit from this policy.

It is important to note that in order to be eligible for consideration under the concession, applicants must be submitting an application in their own right under Paragraph 276 (1) (v), the private life provision of the Immigration Rules, on the basis that they are aged 18 years or above and under 25 years and have spent at least half of their life living continuously in the UK. They must not be applying for an extension of stay as adult dependents of their parent(s). Further, they should specifically request for indefinite leave to remain to be granted in their application for further leave.

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If you would like advice or assistance on any of the issues raised in this note/article, please contact Agnes Lai by email at

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