

**M**ANY WILL agree that as migrants our immigration status can feature in the top three most important life factors, some may say just below family and health. Being granted settled status, sometimes known as Indefinite Leave to remain (ILR) or Permanent residence (PR) can often be a liberating experience as you are no longer subject to conditions in terms of employment and you no longer have time limits on your right to live in the country. However, ILR or PR have some limitations, the chief one being that you can lose your ILR or PR if you are absent from the UK for more than two years. Unsurprisingly many consider taking the next step, which is to apply for Naturalisation, leading to a British passport.

This article seeks to explore the common scenarios that can lead to a refusal of your application for Naturalisation.

### Applicants must be of good character.

This is an important requirement but is often overlooked. There is no strict legal definition of good character. However, there is published policy by the Home Office providing some guidance on how to assess character for the purposes of Naturalisation. [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/770960/good-character-guidance.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/770960/good-character-guidance.pdf). Previous bad behaviour or misconduct will raise a bar to naturalisation for several years after the conduct occurred, even if you no longer engage in such conduct. Some behaviours create an indefinite bar.

## Naturalisation Applications



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### Criminality

Custodial sentences of 4 years or more are normally an indefinite bar to naturalisation. Sentences between 12 months and 4 years can lead to a 15-year bar to naturalisation, with the 15-year period starting from the end of the sentence. Custodial sentences of less than 12 months mean a bar for a period of 10 years. Other types of non-custodial sentences lead to a 3-year bar period. The sentences noted above also refer to sentences given abroad.

These are general guidelines. If the nature of the offence was particularly egregious, the Secretary of State can refuse naturalisation even if the relevant amount of time has passed since the sentence was carried out. Likewise, the Secretary of State has power to disregard some sentences (for instance if the offender was very young when the offence took place, or if the offence was given abroad for something which is not a crime in the UK or for any other good reason).

Fixed penalty notices (as most traffic offences are) are normally disregarded. However, multiple fixed penalty notices over a short period of time could demonstrate a disregard for the law and therefore they could be taken to indicate that someone is not of good character.

Ongoing criminal proceedings also need to be disclosed. They

are not an automatic bar to applying, but the application will be kept on hold until criminal proceedings conclude.

Failure to disclose criminal convictions, may in itself amount to deception and dishonesty, another ground for a finding of unsuitable character.

### Financial unsoundness

Unfortunately, this factor may be more relevant now given the present economic climate. If you were made bankrupt or you were a director of a company that went into liquidation, then the bankruptcy or liquidation order must have been discharged at least 10 years before the application. However, mitigating circumstances can be considered and applications could be accepted when 10 years have not passed. For example, if the bankruptcy or liquidation was not

caused by the applicant, or if there was a serious general economic downturn such as that we are currently facing.

### NHS, Home Office or Council Tax debt

Outstanding debt to the NHS is a ground for refusal. Likewise, failure to pay litigation costs due to the Home Office is a ground for refusal. Avoiding paying council tax may also lead to refusal. Accordingly, it is important that you always provide a forwarding address to Royal Mail when moving to ensure that important post from authorities keeps reaching you. It is not unusual for clients to have been surprised by a debt they were not even aware was due or sought.

### Deception and Dishonesty

An application will normally be refused where the person has

lied or concealed the truth about an aspect of their application. Deception creates a 10-year bar to naturalisation, for instance when deception was used in previous immigration applications or in previous dealings with the Home Office and/or any other government department.

Deception in this context is regarded as continuing until the date on which it is discovered or admitted. The 10-year bar starts from that point, not from the time the deception occurred.

### Past immigration issues

An application will normally be refused on grounds of unsuitable character if, within the previous 10 years, the person has not complied with immigration requirements, including:

- Overstaying (there are some very limited exceptions, for example when a refusal decision was quashed or withdrawn pursuant to successful Judicial Review proceedings and replaced with a positive decision)
- Illegal entry
- Working in the UK without permission
- Failure to report when required to do so, without good reason
- Obtaining public funds when prohibited

The ten-year bar will start running from the time the unlawful conduct stopped. This means that if you have been an overstayer, you will only be able to apply for naturalisation ten years after you stopped being an overstayer, that is to say not earlier than ten years after you regularised your stay.

Any interruptions to lawful leave, however small, while you continued to reside in the UK will be considered overstaying.

### Residence requirements

All absences from the UK during the relevant qualifying period must be carefully accounted for.



## Naturalisation Applications...

The residence requirements are different if you are married (or in a civil partnership with a British citizen).

If you are not married to a British citizen, then you must have:

- lived in the UK for at least the five years before the date of your application;
- spent no more than 450 days outside the UK during those five years;
- spent no more than 90 days outside the UK in the 12 months before the application;
- been granted indefinite leave to stay in the UK or hold permanent residence status;
- had indefinite leave to stay in the UK or permanent residence status for at least 12 months before the application.

If you are married or in a civil partnership with a British citizen, then you must have:

- been granted indefinite leave to stay in the UK or hold permanent residence status;
- lived in the UK for at least the three years before the application;
- spent no more than 270 days outside the UK in those three years;
- spent no more than 90 days outside the UK in the 12

months before the application.

The Home Office has discretion to disregard absences exceeding the above noted thresholds.

Absences substantially exceeding the threshold can still be disregarded on particular grounds; for example, because of exceptional reasons of a compelling nature, or because the absences were an unavoidable consequence of the nature of the applicant's job, or because the applicant had a posting abroad in a government's job. However, absences above 900 days in the relevant five-year period or above 540 days in the three-year period if applicable, and over 180 days during the year preceding the application will rarely be disregarded even in exceptional circumstances.

### Physical presence in the UK

This is an often-overlooked requirement - that the applicant must have been physically present in the UK on the day 5 years (or 3 years if applicable) before the application is received by the Home Office. This means that if your application is submitted on 16/9/2020 you must have been physically present in the UK on 17/9/2015. If you were abroad on that day, say

on holiday, the application will be refused.

### Knowledge of life and language

Often referred to as "KoLL" requirement (knowledge of life and language). You must show that you have sufficient knowledge of both the English language and life in the UK.

The only exemptions from meeting the KoLL requirement are where the applicant is aged over 65, or unable to meet the requirement due to a mental or physical condition or if you are applying under the Windrush Scheme. For applicants aged 60-64 discretion can be exercised to waive the KoLL requirement if you can show that by the time you will be able to pass the tests you will have turned 65 anyway.

### The KoLL requirement has two parts.

Firstly, you must have taken and passed a Life in the UK test. If you passed your test when you applied for your indefinite leave to remain and the pass certificate was accepted by the Home Office on that occasion, the test does not need to be taken again, and it will not expire.

The second part is to show that you have knowledge of English at a minimum level of B1 on the Common European Framework of

Reference for Languages (CEFR). In order to prove your English knowledge you must:

- be a national of a listed majority English-speaking country (the list is provided by the Home Office and includes several Caribbean Countries, the USA, Canada, Ireland, Australia and New Zealand among others);
- you have already provided an English-language qualification at a minimum level of B1 CEFR in a previous application, and that certification was accepted by the Home Office;
- you have a bachelor's degree or above obtained in the UK or thought in English in a foreign country, in which case it must be declared by UK NARIC to be equivalent in level to a UK bachelor's or master's degree, or PhD.
- have taken and passed an English-language test that meets or exceeds level B1 CEFR with a provider approved by the Home Office for this purpose.

### Suitability of Referees

Remember that you need two referees vouching for your good character. One referee should be a person of any nationality who has professional standing (the Home Office publishes a full list of professionals accepted for this purpose). The second referee must normally be the holder of a British citizen passport and either a professional person or over the age of 25. Referees cannot be related to you, or be your solicitor, or be employed by the Home Office. The

two referees cannot be related to each other.

### Tips

If your application is likely to fall foul of any of the above requirements, you should consider addressing the issue in your application by submitting representations. The Home Office can exercise their discretion when deciding your Naturalisation application so it is for you to argue that they should do so. Beware, discretion is used sparingly by the Home Office. In cases where there are issues with good character, it may be best to wait until the relevant deadline has passed. Remember that even if your application is refused, the Home Office will not refund your application fee. Accordingly, it may be advisable to seek legal advice about your concerns before submitting your application to avoid disappointment and the expense of the Home Office fee, which currently stands at £1,330. ■

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