

## Can you lose your Indefinite Leave to Remain (ILR)?

**I**NDEFINITE LEAVE to Remain (ILR) is also commonly referred to as Permanent residence or Settlement status. The Home Office website notes Indefinite leave to remain as:

*If you have ILR ... there is no longer any time limit on your ability to stay in the UK.*

*If you have ILR ... and your home is in the UK you are regarded as settled in the UK.*

It is understandable that most people believe that being granted ILR means you can stay in the UK forever and that it also means you can leave the UK and come back whenever your wish; after all “indefinite” is defined as “no end defined”. Some people would even say that ILR must mean they can stay in the UK “forever”. **They are wrong.**

In much the same way that British citizenship can be lost as evidenced by various recent cases such as that of Shamima Begum, the permanency of your ILR is in fact far from permanent. Your ILR can be lost if you have been absent for two years from the date you last left the UK.

If you have been away for **less than two years paragraph 18 of the Immigration Rules states:**

*A person may resume their residence in the UK provided the Immigration Officer is satisfied that the person concerned:*

*(i) had indefinite leave to enter or remain in the United Kingdom when he last left; and*

*(ii) has not been away from the United Kingdom for more than 2 years; and*



BY LIRA  
SIMON  
CABATBAT



*(iii) did not receive assistance from public funds towards the cost of leaving the United Kingdom; and*

*(iv) now seeks admission for the purpose of settlement.*

The above means that someone absent from the UK for one year and 364 days (so a day short of two years) will be able to resume their ILR in the UK. Unfortunately, the above also means someone who has been absent for two years will face considerably more problems coming back to the UK.

### Paragraph 19 of the Immigration Rules states:

*19. A person who does not benefit from the preceding paragraph [para18] by reason only of having been absent from the United Kingdom for more than two consecutive years, must have applied for, and*

*been granted indefinite leave to enter by way of entry clearance if, he can demonstrate he has strong ties to the United Kingdom and intends to make the United Kingdom his permanent home.*

It should be noted that “two consecutive years” means continuous (no gap) absence. Accordingly, you do not need to be concerned if you were absent for the whole of 2020 and then absent again for a year in 2022. Such absences may affect your future application for naturalisation to obtain a British passport but it should not lead to you losing your ILR as your absences were not “consecutive” or as I would say in Tagalog “hindi sunud-sunud”.

If you have been away for two years your ILR will automatically lapse. In this case, you may still be able to get back your ILR by

applying to return to the UK as a “Returning Resident”.

### Process for applying as a Returning Resident

It is important to note that this is not a visa an immigration officer can grant at the airport. You must apply and be granted a Returning resident visa **before** coming back to the UK.

The application is made online, and the current fee is £516.00.

The Home Office will look at various factors when assessing your application. The guidance (version 3) was last updated in February 2021 provides that immigration officials should look at:

- *their (applicant) strength of ties to the UK including:*
- *the nature of those ties*
- *the extent to which those ties have been maintained during the applicant's absence*
- *the length of their original residence in the UK*
- *the length of time the applicant has been outside the UK*
- *the circumstances in which they left the UK and their reasons for remaining absent*
- *their reasons for now wishing to return*
- *whether, if they were to be re-admitted, they would continue to live in the UK*
- *any other compelling or compassionate factors*

A recent addition to the above factors is where the absence is due to the COVID pandemic.

It is crucial that you consider the above factors in full before submitting your application as they provide a useful guidance as to what documents would be helpful to submit in support of your application. For example, if your absence were to enable you to look after a family member or close friend in the Philippines, it is important that you provide a full medical report setting out their medical concerns. Remember it is for you to prove your case. It is unlikely that the Home Office will ask you for supporting docu-

ments so in the absence of sufficient proof your application will be refused.

### Application granted or refused

If your application is granted, then you will have your ILR back and you may return to the UK where you will again have settlement status.

If your application is refused you can challenge the refusal by means of a procedure called “administrative review”. The deadline is 28 days from the date of the refusal. As a process, I have found administrative review far from appealing as it is essentially the Home Office looking at their own decision. For those who have Human Rights aspects to their case, say if you are returning to join family in the UK, consideration should also be given to appealing the decision. This process means an independent Judge will consider the full facts of your case. In this case you will also have 28 days to launch an appeal. Beware that if you use the administrative review route this is on the assumption that you do not have appeal rights so before proceeding with any challenge you should seek legal advice to ascertain which route applies and if both which is the better avenue for your case. ■

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