LIRA'S IMMIGRATION CORNER

Children and Immigration

ONE VERY common misconception about immigration and children is that being born in the UK means that a child is automatically British; this is wrong. However, there are provisions that may lead to a child becoming British or getting leave to remain (visa) in the UK and I deal with some of the more common routes in this article.

When can a child register to become British?

The process of "registration" applies to children who were **born in the UK**. Registration is the equivalent of "naturalisation" for adults. The two most common routes for registration of children are under the British Nationality Act 1981.

Section 1(3)

Under this provision the conditions are: the child was born in the UK, is under the age of 18 and the child's parent (either father or mother) become British or obtains settlement status (indefinite leave to remain). Once they are over 18 years, they will not be able to rely on Section 1(3).

Section 1(4)

This provision is particularly helpful if the child does not have a visa in the UK, say where the parents are overstayers. In this case, if the child was born in the UK, is now aged at least 10 years, and has lived in the UK continuously during that time (save that the child can be absent from the UK for no more than 90 days in any year) the child can apply for registration to become British under Section 1(4). It should be noted that even after the child becomes an adult s/he can still use this route.

What do you pay and what can you get?

The fee for registration of a child is £1,012 as at June 2021.

Once registered British the child will receive British citizenship and may apply for a British passport.

What happens if the child was not born in the UK?

In most cases, children who join their parents in the UK will simply be their parents' dependant and they will have permission to remain to tally with their parent(s). It becomes more challenging if the parents are overstayers; in this case the child's application should have regard to Paragraph 276ADE1 (iv) of the Immigration rules. This is often referred to as the "Private life route (10-year route)". The best way to consider this rule is to apply it to a very common scenario, set out below.

Sample scenario

The parents entered the UK in 2005, with two children (born 2003 and 2006). The family overstayed. They now want to regularise their leave to remain in the UK. One of the two children just turned 18, but continues to live with the parents, the other child is now 15.

Let us look at the scenario from the children's standpoint and what legal arguments could be made in support of their application.

The applicable Immigration rules (276ADE1) under the Private life route say that where a child:

(iv) is under the age of 18 years and has lived continuously in the UK for at least 7 years (discounting any period of imprisonment) and it would not be reasonable to expect the applicant to leave the UK; or

(v) is aged 18 years or above and under 25 years and has spent at least half of his life living continuously in the UK or

(vi) subject to sub-paragraph (2), is aged 18 years or above, has lived continuously in the UK for less than 20 years (discounting any period of imprisonment) but there would be very significant obstacles to the applicant's integration into the country to which he would have to go if required to leave the UK.

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The younger child (aged 15) in the above scenario will be covered by Immigration Rule 276ADE1(iv) as he is **under** 18. He needs to demonstrate that he has lived in the UK for the last 7 years **and** it is unreasonable to expect him to leave the UK. It is not usually difficult to show that a child has been living in the UK continuously for 7 years as the timeline can be established by school reports or GP letters.

The second limb, namely, the issue of unreasonableness is often more problematic and the very recent case of NA (Bangladesh) v Secretary of State for the Home Department [2021] EWCA Civ 953 has made this even more difficult. Previous caselaw have held that that where a child has been in the UK for seven years such factor should be given significant weight (Court of Appeal case of MA (Pakistan) [2016] EWCA Civ 705). This has been interpreted to mean that the Home Office when refusing such an application must provide powerful reasons why leave should not be granted. The "powerful reasons doctrine" has assisted, if not won, many cases I have been involved in and its apparent demise is of great concern. The Court of Appeal in NA(Bangladesh) has redefined what is "unreasonable" when considering a child's application by deciding that it was reasonable to expect the child to move to Bangladesh as his family could return with him.

As regards the child who is now over 18, he can rely on the provisions noted by 276ADE1 (v) or (vi) above. He needs to show he has lived in the UK for at least half of his life. In our example, the requirement is met, as the child has lived in the UK from age 2 to age 18, i.e. for over half his life.

BUT - where the child is over 18 and has NOT lived over half of his life in the UK then another possible argument is under section 276ADE1(v) which is known as the "significant obstacles to integration" test.

A "very significant obstacle to integration" means something which would prevent or seriously inhibit the applicant from integrating into the country of return…… In our scenario, the fact that the child has been living in the UK for a considerable amount of his life would be a factor to emphasise to the Home Office. Additional issues are health concerns or absence of family support in the home country.

What do you pay and what can you get?

The fee for the above applications (per child) is presently £1052.20 plus Immigration Health Surcharge of £1560.00.

If granted the child will receive limited leave to remain not exceeding 30 months (2.5 years) during which time he can go in/out of the UK without needing a separate visa. Once the child has completed a total of 10 years leave to remain on this basis, he may then apply for indefinite leave to remain.

Article 8 – Human Rights

Both children can **and should** also rely on Article 8 – Human Rights. This is even more important for children over 18 where the Home Office is more likely to say that they can live independently in any country. If you are putting forward Human Rights arguments, you need to back it up. If your budget can extend to getting a Psychiatric or Physiologist report setting out the detrimental effect leaving the UK will have on your child's mental health, I would advise that you provide this as it can be persuasive evidence that to remove the child from the UK is *"unreasonable"* or that the effect of such a step will result to "*very significant obstacles to the applicant's integration into the country to which he would have to go if required to leave the UK.".* Given the recent case of NA (Bangladesh) above, good and persuasive evidence is now even more crucial. ■

Article written by Ms Lira Simon Cabatbat. Lira has been in practice as an Immigration and Family solicitor for over 26 years and is the principal of Douglass Simon Solicitors. She is an accredited Resolution (First for Family) specialist and is a fluent Tagalog speaker. Douglass Simon (tel. 0203 375 0555 • email: cabatbat@douglass-simon.com) has been established for over two decades and has been a centre of excellence, especially in the areas of Immigration, Family and Probate. We have received commendations from judges and clients alike. Please refer to our website for more details.