

## New Concession on "Children" (02/12/2021)

**A**N EARLY Christmas cheer from the Home Office come in the form of a new concession directed at young adults. The recipients of the "good cheer" are limited but is nevertheless welcomed.

The Home Office in October 2021 published new guidance for Home Office staff when considering applications from dependent children of applicants granted leave to remain (visa) because of exceptional circumstances.

**For example**, a family of four consisting of father (Joseph), mother (Mary), a son (Caspar) now aged 12 and a daughter (Mely) now aged 20 were, all, previously overstayers but were granted visas to remain in the UK on the 25<sup>th</sup> of December 2016 (5 years ago). The children were not born in the UK but have lived in the UK for 10 years. Their visas will expire on the 25<sup>th</sup> of December 2021. The usual course of event is that the family will apply for extension of their visas and once they have completed 10 years on the same basis they may then (and only then) apply for indefinite leave to remain (ILR), otherwise also known as settlement or permanent residence.

The new concession offers a possible new course of action to Mely, our 20-year-old daughter in the above example to attain permanent residency before the rest of her family. As to how she might be able to do, this please read on.

**The concession provides that:**

"To be eligible to be considered under this concession an applicant must (at the date of application):

1. Be aged 18 years or above and under 25 years of age and has spent least half of

his / her life continuously in the U K (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."

Paragraph 276ADE(1) set out the requirements to be met by an applicant for leave to remain on the grounds of private life in the UK.

**"...where an applicant meets the above criteria and requests an early grant of ILR the following factors should be con-**



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**sidered. These include (but are not limited to) the following:**

5. the person's age when they arrived in the UK
6. the length of their residence in the UK (including unlawful residence)
7. the strength of their connections and integration to the UK
8. 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
9. efforts made to engage with the Home Office and regu-

larise status

10. any leave currently held and length of continuous lawful leave
11. any period of any continuous leave held in the past
12. whether (and the extent to which) limited leave to remain will have a detrimental impact on the person's health or welfare."

The above means that John, Mary and their 12-year-old son, Caspar can expect to be granted another 2.5 years leave to remain provided they continue to satisfy the Home Office that exceptional circumstances continue to exist.

### What happens to Mely?

Mely, the daughter satisfies the factors set out in 1 to 4 above as

she is: 20 years old, entered the UK when she was only 10, have had leave to remain of 5 years and has spent at least half of her life in the UK. Once these have been established, the next step will be for the Home Office to consider other factors including those set out in points 5 to 12 above and decide whether Mely's circumstances warrant an earlier grant of indefinite leave to remain.

Let's say that Mely has not been able to pursue her studies because of her limited visa as she simply cannot afford to pay overseas student fees, an argument can be made that continuing with her limited leave will have a "detrimental impact on her welfare".

Although the published guidance does not specifically mention prospects, this is no doubt also a consideration. Accordingly, if Mely is seeking to undertake a course that is close to the government's heart, such as nursing or medicine, I suspect that this will also have a beneficial effect on the application.

If successful, Mely will be granted indefinite leave to remain, five years earlier than the rest of her family. Now that will be a great Christmas present! ■

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