

LIRA'S IMMIGRATION CORNER

New Law on Private Life

ON THE 15th of March 2022 the Home Office published its most recent “statement of changes” to the Immigration Rules. The document is comprised of 205 pages and sets out numerous changes including changes to the Private Life route, which will take effect on the 20th of June 2022. This article will focus on the Private Life route including tips and factors to bear in mind when pursuing such applications.

An application based on Private Life can be made by both adults and children and usually covers situations where applicants have lived in the UK for a long time. Private Life is different from Family Life, with the latter mainly dealing with the family connections applicants have made in the UK. In most cases, the two routes are argued at the same time, but they are quite distinct.

The old Private Life Law retained

The eligibility conditions under the old Private Life route required that applicants must show that they are:

1. A child (applicant under 18 years) who has been living in the UK continuously for at least 7 years **and** who cannot reasonably be expected to leave the UK. This provision is equally applicable to children born in the UK or those who entered the UK during their minority.
2. A young adult who arrived in the UK before the age of 18 **and** at the time of the application is aged between 18-24 **and** has spent half of their lives in the UK.
3. An adult (over 18 years) who has lived in the UK continuously for more than 20 years.

4. An adult (over 18 years) who has not lived in the UK for more than 20 years but would face significant obstacles to integration into the country where they would have to live if required to leave the UK.

The new Private Life rules mirror the basis for applications under the above old law but with some notable, and largely positive, changes which are particularly helpful to young applicants.

New Law - Child born in the UK

The new rules provide that a child applicant who was born in the UK and has lived in the UK continuously since birth, for at least 7 years, may now be granted settlement from their first application. This is a welcomed change from the previous rule that only granted the child applicant limited leave to remain of 2.5 years. **Beware**, however, that the applicant child must still satisfy the second condition which is that he or she cannot “reasonably” be expected to leave the UK. Recent caselaw such as the case of NA (Bangladesh) is particularly problematic if the child applicant’s parents are overstayers.

New Law - Child not born in the UK

The new rule also provides that a child applicant who was not born in the UK but who has been living in the UK continuously for at least

7 years and who cannot reasonably be expected to leave the UK may choose to apply for either a 2.5 years or 5 years visa (leave to remain). Prior to the change such applicants would only be granted a visa for 2.5 years.

New Law - Young adult

Similarly, an applicant who is a young adult, who arrived in the UK before the age of 18 **and** at the time of the application is aged between 18-24 **and** has spent half of their lives in the UK, may also choose to apply for either 2.5 years or 5 years visa. Before the change such applicants would only be granted a visa for 2.5 years.

New Law - Adult applicants

For adult applicants such as those applying under the 20 years route, their initial grant of leave (visa) will remain at 2.5 years, and they will still be required to satisfy a total of 10 years before they can apply for settlement. However, there is also good news for an applicant under this route. The old law provides that applicants are required to have visas totalling to 10 years under the Private Life route (only) before they can apply for settlement. The new rule states that applicants can add visa periods obtained under other routes. For example, if an applicant has been in the UK on a Spouse visa for 4 years, he can add those 4 years to the time granted under the new Private Life route. This means such an applicant may apply for settlement after 6 years of leave under the Private Life route, rather than 10 years under the old law. **Beware**, however, that applicants are required to show **continuous** leave



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so any gap / overstaying will likely mean that previous time granted under a different visa will not count towards the overall 10 years.

Date of Implementation

The new law will apply to applications made on or after the 20th of June 2022. For some applicants, it may be better to wait until after this date before making their

application as it may mean the difference between getting limited leave or settlement.

Tips

The above changes are undoubtedly good news but some words of caution.

- NA (Bangladesh) 2021 is a Court of Appeal case and is therefore a binding precedent on the issue of whether a child can “reasonably” be expected to leave the UK. The case may present difficulties to those seeking to apply under the 7 years children route so when making representations applicants should try to distinguish the facts of that case from their application.
- The perceived generosity of the above provisions does not take away the importance and need for applicants to submit good evidence in support of their application. If the case is based on the young adult (18-24) route, the applicant should provide evidence of his/her continued residence in the UK for half of his life. School reports are often good evidence as it covers school terms. Remember, it is for the applicant to present his case with the

best possible evidence at the outset. In the absence of good supporting documents, the Home Office will likely refuse the application.

- In 2021, the Home Office introduced a new provision aimed at young adults (18-24) who have already been granted a visa under the Private Life route; that provision allows applicants to apply for settlement before completion of the usual 10 years qualifying period.
- To succeed under the Private Life route, it is not enough that applicants satisfy the above eligibility requirements as they must also comply with the **Suitability** requirements. “Suitability” is also described as “Character”, so an applicant deemed to have “bad” character may have his application refused on this basis regardless of satisfying the above eligibility conditions e.g., residence of 20 years in the UK.
- The new rules have introduced more stringent requirements in relation to character. For example, an applicant convicted of a criminal offence in the UK or overseas and who is sentenced to imprisonment of 12 months or more will be refused an application for settlement under the new Private Life route. This means that unless the applicant has another route available to him, he will not (ever) be granted settlement status in the UK.

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