

## Right to Remain/Work and Pending Applications

**A** VERY common situation is where an application is pending with the Home Office and the applicant requires confirmation, he has the right to live and work in the UK. In this case, the main provision to consider is **Section 3c of the Immigration Act 1971**.

### Section 3c leave

- “(1) This section applies if—
- (a) a person who has **limited leave to enter or remain** in the United Kingdom applies to the Secretary of State for variation of the leave,
  - (b) the application for variation is made **before the leave expires**, and
  - (c) the leave expires **without the application for variation having been decided**.”

3c leave (visa) means that the applicant's immigration status will be treated as continuing, or in other words “section 3c extends the person's existing leave until the application is decided (or withdrawn)” (Home Office Guidance 18/01/2021).

### Example 1:

An applicant who is in the UK following grant of a Spouse

visa that expired on the 1<sup>st</sup> of May 2021, and who applied for extension of his visa on the 30<sup>th</sup> of April 2021.

As a Spouse visa holder, he has the right to live in the UK so this condition will simply continue. His 3c leave also means that he is perfectly entitled to work in the UK. His employer (and any future employer) can check with the Home Office via the Employment Checking Service for confirmation that he is allowed to work. If the em-

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### Appeals and 3c

#### Example 2:

Taking the above scenario, if the Applicant's application for a Spouse visa is refused, the applicant will usually have 14 days to appeal the decision. Provided he appeals in time, he will continue to benefit from 3c leave which provides:

“(2) The **leave is extended** by virtue of this section during any period when—

- (b) an **appeal under section 82(1)** of the Nationality, Asylum and Immigration Act 2002 could be brought, while the appellant is in the United Kingdom against the decision on the application for variation (ignoring any possibility of an appeal out of time with permission),
- (c) an **appeal** under that section against that decision, brought while

the appellant is in the United Kingdom, is **pending** (within the meaning of section 104 of that Act)”

Where an appeal has been allowed the Home Office's refusal/decision was likely to have been found by the Tribunal to be unlawful. This will mean that the Home Office needs to remake the decision. The effect of this is that the Applicant will have continuous leave to remain in the UK pursuant to section 3C (5)

#### Example 3:

If an applicant's appeal is dismissed, he may continue to rely on the 3c provision even after his appeal is dismissed. Home Office Guidance states that 3c leave continuous where:

“there is an **onward right of appeal** to the Upper Tribunal or Court of Appeal section...”

The guidance goes on to state that: “...a decision of the First-tier Tribunal can be appealed to the Upper Tribunal. Permission to appeal to the Upper Tribunal must be sought from the First-tier Tribunal within **14 days** from when the written reasons for the decision were provided. This means that unless the time limit to appeal is changed by the Tribunal under the case management powers set out in Rule 4 of the Tribunal Procedure Rules 2014 an appellant will always have a further 14 days of section 3C leave after they receive a decision from the First-tier Tribunal. An appeal to the Court of Appeal is finally determined where judgement has been given by the Court of Appeal so 3c leave continues provided the appeal is made in time but an appeal to the Supreme Court does not extend section 3C leave.”

The above means that an applicant who challenges the First Tier Tribunal's decision to dis-



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miss his appeal may still benefit from 3c leave. Consequently, the applicant in our above example will continue to have the right to live and work in the UK in accordance with his Spouse visa until his further challenge is finally decided, even as far as the Court of Appeal. This is subject to the applicant's appeal being submitted in time.

Once the applicant's appeal routes are exhausted and he failed to mount a successful challenge his 3c leave to remain will also cease.

### Varying an application during 3c leave

If the application has not yet been decided an applicant can seek to vary his application and not lose his 3c leave. However,

once his application is refused by the Home Office a new application will not reinstate his 3c leave. For the applicant in our above example this means:

If he varies his application **before** the Home Office decides his Spouse application, he will continue to have 3c leave until his new application is decided.

If he submits a new application **after** the Home Office decides his Spouse application, his 3c leave will have ceased, in the absence of an appeal, and this means that his previous conditions, granted by his spouse visa will also cease, including his right to work in the UK. The Home Office may not take action to remove the applicant whilst his new application is ongoing, but he will no longer have a right

to work. This may well have very dire consequences for the applicant.

### Leaving the UK and 3c leave

If the applicant in our above example leaves the UK before his application for extension of his visa is granted, 3c states that:

"Leave extended by virtue of this section shall lapse if the applicant leaves the United Kingdom."

Put simply, if the applicant in our above case leaves the UK **before** his application is concluded, his 3c leave will also lapse. This means he will need to make a new application, from abroad, for a visa to be able to come back into the UK.

### Importance and limits of 3c leave

As explained by the Home Office in their January 2021 guidance, the "purpose of section 3C leave is to prevent a person who makes an in-time application to extend their leave from becoming an overstayer while they are awaiting a decision on that application and while any appeal or administrative review they are entitled to is pending."

Loss of an applicant's 3C leave may result not only to loss of employment or job opportunities; it may also mean that the applicant's stay in the UK is endangered. In the above example, the applicant who has a Spouse visa seeking his second extension may find that loss of his 3c leave could result to being required to re-start his five-year probationary period from scratch or in some cases it could mean having to leave the UK.

It should also be noted, that the 3c provision does not confer additional rights. Consequently, someone who did not have 3c

leave when he made his application does not gain the right to work simply by making an application. Accordingly, an applicant who has a student visa and applies before the expiration of his leave to remain in the UK as a Spouse will still be bound by his student visa restrictions, say in relation to employment, until his Spouse application is granted. ■

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