

Returning Residents

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I have dealt with a number of cases where a client who has been granted Indefinite Leave to Remain has had to leave the United Kingdom for a lengthy period of time. Whether this is a decision due to work, joining family or other commitments it is always best to be informed about the policy concerning those residents returning to the UK after a period of time abroad. You should be aware that in certain situations, you may be denied entry. You may also have to reapply for entry clearance as a “returning resident”.

There are two categories under which you may fall depending on the length of time that you have spent outside of the UK.

Less than 2 years' absence from the United Kingdom

A person who has been absent from the UK for less than 2 years will retain their indefinite leave and does not need to apply for entry clearance before resuming their residence in the UK. Border force officers will assess whether a person can be admitted for entry under the requirements of paragraph 18.

More than 2 years' absence

A person who has been absent from the UK for more than 2 consecutive years, will automatically lose their indefinite leave as a matter of law. This is set out in paragraph 20 of the Immigration Rules and in Article 13 of the Immigration (Leave to Enter and Remain) Order 2000 (LTERO).

The exception to this was Commonwealth citizens settled in the UK when the 1971 Immigration Act came into force on 1 January 1973. Under section 1(5), they were protected from losing their indefinite leave from absences outside the UK until 1 August 1988 when section 1(5) was repealed. After this date, any indefinite leave would be lost following an absence of 2 years or more.

A person who has been absent for more than 2 years must apply for entry clearance as a returning resident and will be assessed by Entry Clearance Officers under paragraph 19 of the Rules.

There are some exceptions which prevent a person's leave from lapsing. Further provisions were made to the LTERO to ensure that any period spent outside the UK will not count towards the calculation of the 2 year period for the following people:




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- Article 13A - partner or child accompanying a member of HM Forces overseas
 - Article 13B - partner or child accompanying a permanent member of the British Council, Department for International Development, Home Office, or Foreign and Commonwealth Office overseas This is set out in paragraph 19A of the Immigration Rules.

What happens if I arrive at the border?

If you have indefinite leave and who has been absent from the UK for less than 2 years can qualify for entry to the UK under paragraph 18 of the Rules.

Paragraph 18 of the Immigration Rules makes provision for a person to be readmitted for settlement provided that the Border Force officer is satisfied that the person concerned:

- had indefinite leave to enter or remain in the UK when they last left
 - has not been away from the United Kingdom for more than 2 years
 - did not receive assistance from public funds towards the cost of leaving the UK
 - now seeks admission for the purpose of settlement
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How can you prove that you have Indefinite leave to enter or remain

Evidence of your settled status in the UK is normally found in your passport, on an immigration status document or a biometric residence permit (BRP). These documents may include the following:

- indefinite leave to enter (ILE) endorsement or BRP
 - indefinite leave to remain (ILR) endorsement or BRP
 - no time limit endorsement or BRP
 - returning resident visas
 - open date stamps in passport after ILE/ILR has been granted
- If such evidence cannot be provided, a person's settled status may still be confirmed through:
- records on databases, such as central reference system (CRS) or case information database (CID), or paper files that show indefinite leave has been granted
 - other proof the applicant was settled in the UK on or before 1 January 1973 and this status has not been lost or revoked
- A person can apply to have their settled status confirmed by making a No Time Limit (NTL) application.

Absence of less than 2 years

If you have been absent from the UK for less than 2 continuous years, you will retain your indefinite leave. You can prove your absences from the UK through entry and (old) embarkation stamps (endorsed by Immigration Officers).




Seeking entry for the purposes of settlement

In line with paragraph 18, you must show that they are seeking entry for the purposes of settlement. Whilst in most cases you may be returning to settle at the point of entry, there may be other circumstances where a person is in work or study for long periods overseas, but still intends to ultimately settle in the UK on completion of the employment/study. This will not disqualify you from admission as a returning resident, provided:

- you are normally resident in the UK (for example, a person has property or family or other interests in the UK which are being closely maintained through regular contact)
- at the time of your entry, you consider the UK to be your permanent home
- you have not been away from the UK for more than 2 years and intend to return to the UK for settlement in the future

Factors which will be considered when assessing whether you can be reenter the United Kingdom as a returning resident

You may need to show the strength of ties in the UK including the nature of those ties and the extent to which those ties have been maintained during the applicant's absences. It will also be considered the length of the original residence (before you left the UK), the length of time that



you have been outside of the UK, the circumstances in which you left the UK and reasons for doing so; the reasons you are now wishing to return to the UK and whether if you were to re-enter you would continue living in the UK. Other compassionate and compelling factors can also be presented.


In what situation can you not qualify as a returning resident?

The following do not qualify as returning residents:

- a person whose previous stay was subject to a time limit (for example a person had limited leave to enter or remain)
- a person who was exempt from control under section 8 of the Immigration Act 1971 at the end of their previous stay (for example seaman, aircrew and other special cases)
- a person whose departure from the UK was financed from public funds under either section 5(6) or section 29 of the act (they made a voluntary departure with payments)
- a person to whom the general grounds of refusal set out in paragraph 320 of HC 395 apply

Applying for Entry Clearance

Where you are absent from the UK for more than 2 years, your indefinite leave will automatically lapse. In line with paragraph 19 of the Rules, you may nevertheless be admitted as a returning resident if you can demonstrate strong ties to the UK. Any applications for readmission following a 2 year absence, must be made at a UK visa application centre.



Would you like further advice?

For the best expert legal advice and outcome on your immigration application contact Buckingham Legal Associates on 0203 006 2742 or contact us online at www.buckslegal.co.uk.



Naila Khan is an experienced Senior Immigration Advocate. She regularly advises clients on complex immigration issues.

If you would like immigration advice please contact us!