

## CHAPTER 17

### SECTION 2 – CARERS

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#### 17. Introduction

The United Kingdom's position on carers and the 'Care in the Community' policy stems from existing case law, particularly the case of R v Secretary of State for the Home Department Ex parte Zakrocki.

<http://www.bailii.org/cgibin/markup.cgi?doc=/ew/cases/EWCA/Civ/1996/1326.html>

It is important to note that UKBA and the Department of Health have consistently argued that the care in the community policy is **not** designed to enable people to stay in the UK who would otherwise not have leave to do so. Rather, leave

should only be granted where it is warranted by particularly compelling and compassionate circumstances.

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## **17.1 Entry Clearance**

There is no provision in the Immigration Rules for issuing entry clearance on the basis of an applicant coming to the UK to care for a sick family member or friend. A person who wishes to enter the UK to provide short-term care or make alternative arrangements for the long term care of a friend/relative may do so under the Rules relating to general visitors.

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### **17.1.1 Referred applications for Entry Clearance**

Where the Entry Clearance officer feels that an applicant seeking entry to care for a relative does not qualify as a visitor, but there are compelling and compassionate circumstances, the case can be referred to, Referred Cases Unit, UK Border Agency International Group to be considered **outside the Immigration Rules**.

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### **17.1.2 Key points**

Whilst each case must be looked at on its individual merits, when considering whether a general visit visa should be granted the following additional points should be borne in mind for those who state they want to look after a relative whilst in the UK.

- the type of illness/condition (this must be supported by a consultant's letter);
- the type of care required;
- the care which is available (e.g. from the social services or other relatives/friends);
- the long term prognosis.

Further information on entry clearance and carers can be found in Chapter 18, section 18.21(ii), [of the Entry Clearance Guidance](#), volume 1-General Instructions.

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### **17.1.3 Refusing referred Entry Clearance applications**

Where an application for Entry Clearance as a carer has been referred to UKBA and a decision has been made to refuse, the application should be refused under paragraph 320(1) of the Immigration Rules. A covering letter should advise that the carer concession is a concession to enable a person already in the UK in a temporary capacity to make long-term arrangements for the care of a friend or relative. The following wording can be included in the covering letter:

'I write in reference to your application for entry clearance to the United Kingdom as the carer for ..... However, as explained in the attached refusal notice, there is no provision for this in the Immigration Rules. The carer 'concession' is a concession to enable a person already in the United Kingdom in a temporary capacity to make long term arrangements for the care of a relative or friend. A person who wishes to enter the United Kingdom to provide short term care or make alternative arrangements for the long term care of a relative or friend may do so under the Rules relating to visitors'.

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## **17.2 Leave to Enter**

There is no provision in the Immigration Rules for leave to enter to be granted solely to allow a person to care for a friend or relative in the UK. Where an applicant wishes to care for a friend or relative for a short period, s/he must first satisfy the requirements of the Immigration Rules relating to general visitors. These can be found in [Chapter 2, section 1](#) of the Immigration Directorate Instructions (IDIs).

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### **17.2.1 Refusing leave to enter as a carer**

Where it has been decided to refuse someone who has applied for leave to enter under the terms of the carers concession this should be done on the basis that they are not seeking entry for a purpose that is covered by the Immigration Rules. ([Paragraph 320\(1\) of HC395 refers.](#)) Refusal wording can be found in [annex A](#). Decision notice IS82A, should be used when refusing leave to enter outside the Rules. Brief reasons as to why the decision to refuse was taken must be given in the refusal notice.

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## **17.3 Leave to Remain**

Whilst each case must be looked at on its individual merits, when considering whether a period of leave to remain should be granted, the following points are amongst those that should be borne in mind by caseworkers:

- the type of illness/condition (this should be supported by a Consultant's letter); and
- the type of care required; and
- care which is available (e.g. from the Social Services or other relatives/friends); and
- the long-term prognosis.

Caseworkers should be aware that while most applications will come from carers who are in the UK as visitors this will not always be the case.

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### **17.3.1. Granting an initial period of leave to remain**

Where the application is to care for a sick or disabled **relative** it will normally be appropriate to grant leave to remain for 3 months on Code 3 (no recourse to employment or public funds) **outside the Rules**.

**The** applicant **must** be informed that leave has been granted on the strict understanding that during this period arrangements will be made for the future care of the patient by a person who is not subject to the Immigration Rules.

The following wording must be added to the grant letter:

'I must advise you/your client that this leave has been granted exceptionally outside the normal requirements of the Immigration Rules to enable you/your client to make permanent arrangements for the future care of your/his/her relative, by a person who is not subject to immigration control. It is unlikely that any further leave will be granted on this basis'.

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### **17.4 Requests for further leave to remain**

Where an application is received requesting a further period of leave to continue to care for a sick relative or friend further detailed enquiries must be made to establish the full facts of the case. The applicant must produce the following:

- a letter from a registered medical practitioner who holds an NHS consultant post with full details of the condition/illness and long term prognosis; and
- a letter from the local Social Services Department, where they are known to be involved, advising of their level of involvement, the perceived benefits of the presence here of the applicant, and an explanation as to why suitable alternative care arrangements are not available.
- Any further evidence that alternative arrangements for the care of the patient have been, or are being, actively explored. For example, whether contact has been made with voluntary services/charities to see if they can assist or whether the possibility of private care has been costed and

- assessed. (a previous grant of a 3 month extension should have been accompanied by a letter explaining that the extension was granted to enable such arrangements to be made, described in paragraph 4 above); and
- full details of the patient's family in the United Kingdom, the degree of relationship, and, if applicable, details of how the patient was previously cared for and why these arrangements are no longer considered suitable and/or are no longer available; and
  - details of the applicant's circumstances in his home country, such as whether he has a spouse and children, the type of employment and other relevant family circumstances (as a general rule a person seeking to remain in the United Kingdom on a long term basis as a carer should normally be unmarried and have no dependants); and
  - evidence that there are sufficient funds available to maintain and accommodate himself/herself without working or recourse to public funds.

Caseworkers should be aware that the fact that we may have previously granted an applicant leave to remain as a carer does not give rise to a legitimate expectation that we should grant again.

The enquiry letter in [Annex B](#) can be used in cases where an applicant is applying for leave/further leave to remain on the basis that they are caring for a sick relative or friend. Caseworkers should note however, that the letter's questions are not exhaustive and should be amended to fit the particular circumstances of the case.

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#### **17.4.1. Granting a further period of leave to remain**

In cases where there are sufficient exceptional compassionate circumstances to continue the exercise of discretion, leave to remain may be granted for up to 12 months at a time, on Code 3 (no recourse to employment or public funds). In wholly exceptional circumstances Code 1A (access to employment and public funds allowed) may be appropriate but such a decision must not be taken without the agreement of a Senior Caseworker

In all cases it **must** be made clear to the carer that we are acting exceptionally outside the Immigration Rules. The wording in section paragraph 3.1 can be added to the grant letter.

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#### **17.5. Refusing Leave to Remain - Alternative arrangements**

If caseworkers are intending to refuse an application from an applicant who wishes to provide care for a relative in the UK, the Secretary of State must be able to show that s/he is satisfied that there would be alternative arrangements for care should the applicant not be available.

The fact that an applicant may be able to provide the best care for the patient does not mean that the patient cannot be adequately cared for by the local authority. Local authorities are under a duty to put themselves in a position to arrange suitable care for all categories of people in respect of whom they have community care functions.

If social services are involved caseworkers should send them a letter asking whether the carer has made alternative arrangements and if not what kind of alternative arrangements could be made.

It would usually be the case that the local social services are already involved because any previous extension would have had to have been supported by evidence of the care needed by the patient. If social services are not involved and the applicant maintains there is no alternative care available other than that provided by themselves, caseworkers should write to the applicant to ask why they have not explored this option. It may be the case that there are other arrangements that could be made which do not involve the social services such as other family members.

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### **17.5.1 Refusal Process**

Where it has been decided that the facts of the case do not merit a grant of leave to remain outside the Rules, the application should be refused under [paragraph 322\(1\)](#) of the Immigration Rules. Refusal wording can be found in [annex A](#). When refusing leave/further leave to remain as a carer, a covering letter **must** be sent with the refusal notice and should clearly state:

- the main criteria of the concession, as relevant to the application made;
- why the applicant does not meet the criteria laid down in this concession; and
- that the Secretary of State has considered the exercise of discretion but is not prepared to exercise discretion on this occasion.

This letter should be sufficiently detailed to satisfy an applicant and the Asylum and Immigration Tribunal, should an appeal be lodged, that the application has been properly considered in line with the terms of this concession. Its contents will form the basis of our argument in any appeals explanatory statement or in the event of a further legal challenge.

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### **17.6. CID Codes**

X3 Extension- other reasons  
V5 Refusals- 6 months completed

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### **17.7 Appeal rights: Entry Clearance/Refusal of leave to Enter**

Please refer to [Chapter 12, section 1](#) of the IDIs for details on the appeal rights for leave to enter/Entry Clearance cases.

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#### **17.7.1 Appeal rights: Leave to Remain/Further leave to remain**

Where the exercise of discretion is not deemed appropriate, the application for leave to remain/further leave to remain should be refused on the ground that there is no provision in the Immigration Rules ([Paragraph 322\(1\)](#) of HC 395). For those who submit in time applications (i.e. the applicant still had valid leave at the time of application) as a carer any decision to refuse will attract a limited right of appeal. Caseworkers should use the refusal notice ICD 2241 currently available on the Document Generator System.

If an out of time application, (i.e. the applicant had no valid leave at the time of application) for leave to remain/further leave to remain as a carer is received, any decision to refuse will not attract a right of appeal. Caseworkers should use the refusal notice ICD 2242 currently available on the Document Generator System.

For further details regarding rights of appeal, please see [Chapter 12](#) of the IDIs.

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### **17.8 Applications for Settlement**

A carer will not normally qualify for settlement based on the time he has spent in the United Kingdom looking after a sick relative or friend unless he qualifies under the Immigration Rules relating to long residence or qualifies under some other category of the Rules. Indefinite leave to remain should be refused under [Paragraph 322\(1\)](#) of HC 395. Refusal wording can be found in [annex A](#). Where an application for settlement has been received which falls for refusal, caseworkers should still consider whether further limited leave should be granted.

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### **17.9 Leave to Remain - Carers for friends of a sick or disabled person**

Applications for leave to remain in order to care for a sick or disabled **friend**

should normally be refused. However, in an emergency (e.g. where the patient has suddenly fallen ill and there is insufficient time to arrange permanent care or where there is nobody else in the United Kingdom to whom the patient can turn) it may be appropriate to grant leave.

Caseworkers should request written confirmation from the sponsor that the applicant is his/her friend. The sponsor will need to indicate how long he has known the applicant and will need to confirm that s/he agrees that the applicant can act as his/her carer. If this is not possible, caseworkers will need to request such confirmation from the sponsor's relatives.

Where appropriate, leave to remain may be granted for a period of 3 months on Code 3 (no recourse to employment or public funds) outside the immigration rules. An extension of further leave should not be given unless there are **wholly exceptional circumstances**. Such circumstances could include where the sponsor is terminally ill and has **no** Social Services or family support available.

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#### **17.10 Applications for leave to remain to care for relatives who do not have settled status in the UK.**

Where someone is applying for leave to remain to care for a person who is not settled in the UK (for example, parents wishing to remain in the UK to care for their child while s/he receives treatment) such applicants should be considered for Discretionary Leave to Remain. Further guidance can be found in [Chapter 1, section 8](#) of the IDIs.

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#### **17.11 Discretionary Leave**

Applicants, who are refused leave as a carer, would not normally qualify for Discretionary Leave. However, in the event that a caseworker feels that the particular facts may warrant a grant in this category, they should consult their Senior Caseworker in the first instance.

Further information on the criteria for granting Discretionary Leave can be found in [Chapter 1, section 14](#) of the Immigration Directorate Instructions.

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#### **17.12 Public Funds**

Under the Care in the Community arrangements, some patients may qualify for an Attendance Allowance from which they can pay for a person to care for them. Attendance Allowance is a tax-free benefit for people aged 65 or over who need help with personal care because they are physically or mentally disabled.

The allowance is paid to the patient rather than the carer and therefore the carer would not be considered to be in receipt of public funds. If the patient is claiming other benefits and is using these to support and accommodate the carer, provided that the patient is not claiming any extra benefit for the carer then again this should not be considered as recourse to public funds unless the carer was to claim benefits in his own right. For further details on public funds, please refer to [Chapter 1, section 7](#) of the IDIs.

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## **Refusal Wordings**

### **Leave to enter**

#### [Paragraph 320\(1\)](#)

You have applied for leave to enter the United Kingdom in order to care for a sick relative/friend. However, I am not satisfied that entry is being sought for a purpose covered by the Immigration Rules.

### **Leave to remain/further leave to remain**

#### [Paragraph 322\(1\)](#)

You have applied for leave to remain/further leave to remain on the basis that you wish to remain in the United Kingdom in order to care for a sick relative/friend. However, you have applied for leave to remain/further leave to remain for a purpose not covered by the Immigration Rules.

### **Indefinite leave to remain**

#### [Paragraph 322\(1\)](#)

You have applied for indefinite leave to remain in the United Kingdom in order to care for a sick relative/friend. However, you have applied for indefinite leave to remain for a purpose not covered by the Immigration Rules.

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ANNEX B

Carer enquiry letter

Dear **name**

I am writing about your/your client's application for **leave to remain/further leave to remain as a carer of [name]/your relative**.

To help me consider the matter, please send me the following documents.

Please send original documents as photocopies are not acceptable.

Documents required:

1. Please provide a letter from a consultant outlining the illness/condition that your relative is suffering from and what the chances of recovery are. It would also be helpful if the consultant could outline the likely duration of the illness/condition and whether s/he is likely to recover.
2. What family members has **[name]/your relative** got in the United Kingdom? Please give their names, addresses and their relationship to him/her.
3. Have you left any other family members in your home country in order to care for **[name]/your relative** in the United Kingdom? If you have any children in your home country, what provision have you made for their care while you are in the UK?
4. Please provide a letter from the Social Services detailing what help has been offered and received by **[name]/your relative**. If help is being provided by Social Services, what additional care will you be giving to your relative?
5. If Social Services have undertaken a care assessment of the family member whom you wish to act as carer for, please provide a copy of this.
6. If your relative is not receiving any help from Social Services, please submit a letter from them explaining why this is so.
7. If accommodation is owned, please submit documentary evidence of ownership.
8. Please state how many bedrooms and living rooms in the accommodation and who lives there. Please give their names and relationship to **[name]/your relative**.
9. If you were to remain in the United Kingdom to care for **[name]/your relative**, who will support you financially? Please provide this persons bank statements covering the last 3 months.
10. Who cared for **[name]/your relative** before you came to the United Kingdom? Why can this not continue?

Please do not hesitate to telephone the above number if you need assistance.

To enable the application to be considered properly we need all the above documents, and we believe that it would be reasonable to receive this within 28 days unless we are advised of a good reason justifying an extension.

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If you fail to produce the information requested within the time that has been given, I must warn you that the application will be considered on the basis of the information currently available and also with reference to paragraph 322 of HC395 of the Immigration Rules, which may result in the application being refused.

Yours sincerely

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