



Home Office

Gurkhas and Hong Kong military unit veterans discharged before 1 July 1997 and their family members

Version 2.0

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About this guidance

This guidance tells you about applications for settlement under **Appendix Gurkha and Hong Kong military unit veteran discharged before 1 July 1997**.

This guidance covers settlement applications from:

- Gurkhas and Hong Kong military unit veterans discharged before 1 July 1997
- Family members of Gurkhas and Hong Kong military unit veterans discharged before 1 July 1997

Contacts

If you have any questions about the guidance and your line manager or senior caseworker cannot help you or if you think that the guidance has factual errors, then email the Armed Forces Policy team.

If you notice any formatting errors in this guidance (broken links, spelling mistakes and so on) or have any comments about the layout or navigability of the guidance then you can email the Guidance Rules and Forms team.

Publication

Below is information on when this version of the guidance was published:

- version **2.0**
- published for Home Office staff on **06 November 2024**

Changes from last version of this guidance

This guidance update incorporates changes made in: [Statement of changes to the Immigration Rules: HC 217, 10 September 2024 - GOV.UK \(www.gov.uk\)](#).

The changes to this guidance reflect the following updates to the Immigration Rules:

- a refusal following consideration of paragraph AF (GHK) 13A.1. will attract a right of appeal rather than being an eligible decision for the purpose of an administrative review
- changes are being made in response to issues raised during litigation, to Appendix Bereaved Partner and Appendix Gurkha and Hong Kong military unit veteran discharged before 1 July 1997, to allow bereaved partners (a spouse, civil partner, or unmarried partner, who has previously been recognised as a partner under Part 8, Appendix FM, Appendix EU, Appendix HM Armed Forces, or Appendix Gurkha and Hong Kong military unit veteran discharged before 1 July 1997 of these Rules) and their dependants to benefit from a fee waiver if they are destitute

- currently, a bereaved partner who has no other route to stay must leave the UK if they cannot afford the fee - so, the provision of a fee waiver to those who are destitute will allow them to settle in the UK at the time they are most vulnerable

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Introduction

Background

This guidance was introduced in October 2023 with the introduction of the new Appendix Gurkha and Hong Kong military unit veteran discharged before 1 July 1997 set out in HC1780 Statement of Changes to the Immigration Rules, laid before Parliament on 7 September 2023. They sit alongside [Appendix HM Armed Forces](#) and [Appendix International Armed Forces and International Civilian Employees](#), laid before Parliament on 14 March 2024.

On 1 July 1997, control of Hong Kong was transferred to China from the UK. At the same time, the Brigade of Gurkhas moved its headquarters from Hong Kong to the UK; Gurkhas discharged on or after that date would therefore have had more opportunity to develop close physical ties with the UK.

In May 2009, the Home Secretary announced to Parliament that any former Gurkha with at least 4 years' continuous service who had been discharged from the Brigade of Gurkhas before 1 July 1997 would be eligible for settlement in the UK. It was introduced using a concession outside the Immigration Rules to recognise the unique nature of the service given by the Brigade of Gurkhas and the concession was available to them alone, and their family members, on a discretionary basis.

The concession applied to those who served in the Brigade of Gurkhas from January 1948 when it became part of the British Army. Applications from former Gurkhas who were discharged before January 1948 were considered on a case-by-case basis and the concession was available to former Gurkhas, their partners and their children aged under 18. The concession was subsequently widened to include out of country applications from bereaved partners of former Gurkhas and, in certain circumstances, children aged 18 or over.

In March 2023, the Government announced it intended to enable pre-1997 Hong Kong military unit veterans to settle in the UK. This was done by extending the provisions of the concession that already existed for former Gurkhas and their families to Hong Kong military unit veterans and their families.

Policy intention

The policy intention is to:

- provide for eligible Gurkhas and Hong Kong military unit veterans who were discharged before 1 July 1997, and their eligible family members, by providing policy under the Immigration Rules rather than on a discretionary basis outside of them
- ensure those eligible, along with eligible family members, who wish to settle in the UK, are able to do so

Definitions

For the purposes of this guidance, the following terms apply:

HM Armed Forces means Regular service personnel in the Royal Navy, the Royal Marines, the Army (including the Brigade of Gurkhas), the Royal Air Force, and does not include the Reserve forces.

Pre-97 Gurkha or Gurkha discharged before 1 July 1997, means a national or citizen of Nepal who served in the Brigade of Gurkhas of the British Army and was discharged from service before 1 July 1997.

Pre-97 Hong Kong military unit veteran or Hong Kong military unit veteran discharged before 1 July 1997 means a national or citizen of China, enlisted in Hong Kong (Hong Kong Chinese locally enlisted personnel) who served in the Hong Kong Military Service Corps (HKMSC) of the British Army and was discharged before 1 July 1997; or a national or citizen of China, enlisted in Hong Kong (Hong Kong Chinese locally entered personnel) who served in the Hong Kong Squadron of the Royal Navy and was discharged before 1 July 1997.

All locally enlisted/entered personnel were discharged before Hong Kong was handed back to China on 1 July 1997. In service, these personnel had had their own 'terms and conditions of service', pay rates and pension scheme. They are analogous to pre-97 Gurkha veterans who were discharged from service prior to 1 July 1997.

Enlisted or entered means served in one of the units defined above.

Discharged means an HM Armed Forces member who has permanently left HM Armed Forces. All those who have been discharged will hold a certificate of discharge. Those about to be discharged will hold a letter from their commanding officer confirming their date and reasons for discharge. Anyone compelled to leave HM Armed Forces following a court martial has not been discharged but dismissed.

Medical discharge means an HM Armed Forces member who is discharged because their health prevents effective service.

Reckonable service refers to the actual years and days that count towards an HM Forces pension. Different Armed Forces pension schemes have different criteria for when reckonable service starts to accumulate. Generally, it does not include certain absences including any period of detention, unauthorised absence or unpaid leave. For definition of reckonable service in a particular scheme please refer to [Armed forces pensions](#).

Gurkha Records Office means the records database, held in Nepal, with key data on current and former Gurkhas, including the Kindred Roll.

Kindred Roll is the British Army document that records the details of close relatives of Gurkha personnel until 2007/2008.

Pension means in receipt of a Ministry of Defence pension.

Award for gallantry means operational and non-operational or civilian awards for specific acts of gallantry including the Victoria Cross, the George Cross, the Distinguished Service Order and the Conspicuous Gallantry Cross. Details about all medals can be found here: [Medals: campaigns, descriptions and eligibility](#).

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Relevant legislation

Immigration Rules

From 2009, a concession outside the Immigration Rules enabled settlement applications from Gurkhas discharged before 1 July 1997, and their family members.

In March 2023, the Government announced it intended to enable former Hong Kong military unit veterans discharged before 1 July 1997 to settle in the UK. This was done by extending the provisions of the 2009 settlement concession that already existed for former Gurkhas and their families to Hong Kong military unit veterans and their families; bringing both cohorts into the Immigration Rules providing greater transparency on these routes.

[HC1780](#), which detailed these changes, was laid before Parliament on 7 September 2023.

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Validity for settlement applications

This section tells you where to find the validity requirements that an applicant must meet when they apply for settlement as a Gurkha or Hong Kong military unit veteran discharged before 1 July 1997 or as a dependant of a Gurkha or Hong Kong military unit veteran discharged prior to 1 July 1997.

The requirements to be met for an application to be valid are set out in:

- paragraphs AF (GHK) 1.1. to AF (GHK) 1.3. of **Appendix Gurkha and Hong Kong military unit veteran discharged before 1 July 1997**
- paragraphs AF (GHK) 7.1. to AF (GHK) 7.4. of **Appendix Gurkha and Hong Kong military unit veteran discharged before 1 July 1997** for dependants

The Immigration Health Surcharge does not apply.

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Suitability for settlement applications

This section tells you where to find the suitability requirements that an applicant must meet when they apply for settlement as a Gurkha or Hong Kong military unit veteran discharged before 1 July 1997 or as a dependant of a Gurkha or Hong Kong military unit veteran discharged prior to 1 July 1997.

The requirements to be met for an application to be valid are set out in:

- paragraphs AF (GHK) 2.1. and 2.2. of **Appendix Gurkha and Hong Kong military unit veteran discharged before 1 July 1997**

In considering the suitability criteria in Appendix Gurkha and Hong Kong military unit veteran discharged before 1 July 1997 and Part 9 of the Immigration Rules, you must refer to the Grounds for refusal: criminality guidance.

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Eligibility for settlement

This section tells you the requirements an applicant must meet to be granted settlement as a Gurkha or Hong Kong military unit veteran discharged before 1 July 1997.

The requirements can be found in paragraphs AF (GHK) 3.1. to AF (GHK) 4.2. of **Appendix Gurkha and Hong Kong military unit veteran discharged before 1 July 1997**.

TB certificate

Where an applicant is applying under **Appendix Gurkha and Hong Kong military unit veteran discharged before 1 July 1997**, they will need to provide a valid TB certificate with their application if they have been residing within a country listed in [Appendix Tuberculosis](#) to the Immigration Rules for the 6 months immediately preceding the application. This only applies to entry clearance applications.

If a Gurkha or Hong Kong military unit veteran discharged before 1 July 1997 has not supplied a valid TB test certificate when they are required to do so, the application should be refused under Appendix AF(GHK) 3.2.

Further information regarding which applicants are required to obtain a TB certificate before applying and the valid test centres can be found at [Tuberculosis tests for visa applicants](#).

Evidence of employment

For an applicant to qualify as a Gurkha or a Hong Kong military unit veteran discharged before 1 July 1997, they must be one of the following:

- a national or citizen of Nepal who served in the Brigade of Gurkhas of the British Army and was discharged before 1 July 1997
- a national or citizen of China, enlisted in Hong Kong (Hong Kong Chinese locally enlisted personnel) who served in the Hong Kong Military Service Corps (HKMSC) of the British Army and was discharged before 1 July 1997
- a national or citizen of China, enlisted in Hong Kong (Hong Kong Chinese locally enlisted personnel) who served in the Hong Kong Squadron of the Royal Navy and was discharged before 1 July 1997

You must be satisfied that the applicant is a Gurkha or Hong Kong military unit veteran discharged before 1 July 1997 whose established military service must have been for a continuous period of at least 4 years, unless there is evidence that one or both of the following applies:

- the applicant is in receipt of a Ministry of Defence (MoD) war pension
- the applicant has a medal awarded by the MoD for gallantry

Applicants must provide sufficient documentation to demonstrate their eligibility under the Immigration Rules. This could include enlistment papers and discharge papers.

Settlement applications

Applications from a Gurkha and Hong Kong military unit veteran discharged before 1 July 1997 and their family members must be made on [form VAF \(AF\)](#) from outside the UK, or the [form SET\(AF\)](#) in the UK.

Successful settlement applicants who are outside the UK will be issued with entry clearance.

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Grant or refuse

This section tells you how to grant or refuse a settlement application under **Appendix Gurkha or Hong Kong military unit veteran discharged before 1 July 1997**.

Gurkha or Hong Kong military unit veteran discharged before 1 July 1997: grant settlement

If the applicant meets all the requirements of **Appendix Gurkha or Hong Kong military unit discharged before 1 July 1997**, and none of the [general grounds for refusal](#) apply, you must grant settlement.

If the applicant is outside the UK, entry clearance must be granted. You must use the SET-AF endorsement.

Gurkha or Hong Kong military unit veteran discharged before 1 July 1997: refuse settlement

If you are not satisfied that the applicant meets all the requirements of Appendix Gurkha or Hong Kong military unit veteran discharged before 1 July 1997, you must refuse the application.

Rights of appeal and administrative review

If an application under Appendix Gurkha or Hong Kong military unit veteran discharged before 1 July 1997 is refused and the applicant thinks the Home Office has made an error in considering their application, they can apply for an [administrative review](#).

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Dependants of a Gurkha or Hong Kong military unit veteran discharged before 1 July 1997

This section tells you the requirements to be met by partners, children, bereaved partners, bereaved children and adult dependent children making settlement applications under **Appendix Gurkha and Hong Kong military unit veteran discharged before 1 July 1997**.

Partner of a Gurkha or member of a Hong Kong military unit veteran discharged before 1 July 1997

If the applicant is applying as a partner, they must meet the relationship requirements as specified in [Appendix Relationship with Partner](#).

Dependent child (“child”) of a Gurkha or Hong Kong military unit veteran discharged before 1 July 1997

If the applicant is applying as a child, they must meet the requirements for a dependent child as specified in Appendix Children.

Bereaved partner of a Gurkha or Hong Kong military unit veteran discharged before 1 July 1997

A bereaved partner must meet the relationship requirements set out in paragraph AF (GHK) 11.3. of Appendix Gurkha or Hong Kong military unit veteran discharged before 1 July 1997.

Bereaved Partner Fee waiver

In accordance with fees regulations, a person who is destitute will be exempt from paying the application fee for entry clearance/settlement as a bereaved partner.

A person is considered destitute if they:

- do not have adequate accommodation or any means of obtaining it (whether or not their other essential living needs are met)
- have adequate accommodation or the means of obtaining it, but cannot meet their other essential living needs

An applicant who claims to be destitute must:

- submit the relevant application form but not submit the specified fee
- provide evidence on the form or on any attachments to the form that they have no means to pay the specified fee

Applicants are not expected to seek a loan to pay the fee and third parties are not expected to pay the fee on their behalf.

You must assess the fee waiver application on the information contained on the application form and any accompanying documentary evidence provided.

Bereaved partner fee waiver evidence

Your assessment of whether the applicant qualifies for a fee waiver will be based on their individual circumstances and those of any dependent family members, on the information and accompanying documentary evidence provided.

The applicant should provide information and evidence about their financial circumstances. Where the applicant seeks a fee waiver, but the information and evidence supplied is not sufficient to enable a grant, you should make additional enquiries to try to establish whether the applicant qualifies for a fee waiver.

Where there are exceptional circumstances and it is clear an applicant needs more time to submit evidence, you can make an additional request or provide more time for the evidence to be provided. When the request is made you must tell the applicant that if they fail to provide additional information in response to the request, their fee waiver request will be rejected. You must manage sensitively any requests for information or evidence.

In all cases, evidence should be up to date unless there are compelling reasons the applicant is relying on older evidence.

The ability of the applicant to provide evidence may be impacted by their personal circumstances, in particular, their circumstances arising from the bereavement.

You might expect to see information and evidence relating to:

- the applicant's accommodation, the cost of it and the applicant's contribution toward the cost of accommodation
- the applicant's income from work, benefits, local authority payments or other sources such as family or friends
- the applicant's capital assets such as savings in the bank
- the applicant's outgoings such as utility bills, food, toiletries, clothes
- any other relevant reason the applicant is unable to pay the fee

Examples of supporting evidence could include:

- tenancy agreement
- pay slips
- bank statements
- utility bills
- letters from Department for Work and Pensions (DWP) or HM Revenue & Customs (HMRC) confirming benefits paid to the applicant

- letters from a local authority regarding accommodation or financial support
- letters from third party organisations or registered charities regarding accommodation or financial support
- letters from family or friends providing accommodation or other financial support
- a written explanation from the applicant explaining their financial circumstances

If the applicant is being supported by family or friends, the Home Office does not expect that support to extend to them paying an application fee.

If an applicant claims they are totally or partially reliant on family or friends for support and they are not able to provide documentary evidence from those providing the support, you will need to understand why documentary evidence is not available and assess whether the explanation is reasonable.

Where you are not satisfied that the applicant qualifies for a fee waiver on the evidence initially provided, you should seek further information from the applicant via the letter for that scenario. Again, where there are exceptional circumstances and it is clear an applicant needs more time to submit evidence, you can make an additional request or provide more time for the evidence to be provided. When the request is made you must tell the applicant that if they fail to provide additional information in response to the request, their fee waiver request will be rejected. You must manage sensitively any requests for information or evidence.

Having reviewed any reasons given for a lack of documentary evidence, you may consider exercising discretion to accept the applicant's account regarding their financial circumstances in the absence of corroborative documentary evidence.

Bereaved Partner fee waiver decision

It is the responsibility of the applicant to satisfy you of their claimed financial circumstances.

Rejection of a fee waiver request

You should only reject the fee waiver request if, having received all necessary information, including that provided from any requests for additional information that you have made, and having considered the information and evidence provided in the round, and having considered the exercise of discretion, you are still not satisfied that the applicant qualifies for a fee waiver.

You must set out in writing why the applicant does not qualify for a fee waiver based on the evidence they have provided. This must make clear this is not a refusal of the application for settlement.

You must advise the applicant that if they wish to validate their application, they must pay the specified fee within 10 working days and if they do, the date of application remains the date the original application was submitted.

If the fee is paid within that period, and the application meets the other validation criteria, you should consider the application.

If the fee is not paid within 10 working days, and the applicant has failed to demonstrate that they qualify for a fee waiver, you must reject the application as invalid.

Bereaved child of a Gurkha or member of a Hong Kong military unit veteran discharged before 1 July 1997

If the applicant is applying as a bereaved child of a Gurkha or Hong Kong military unit veteran discharged before 1 July 1997, in addition to meeting the requirements for a dependent child, they must provide a death certificate for the Gurkha or Hong Kong military unit veteran.

If the Gurkha or Hong Kong military unit veteran is deceased at the date of application, the applicant must show that their parent would have met the requirements for settlement as a Gurkha or Hong Kong military unit veteran had they not died.

Adult child of a Gurkha or Hong Kong military unit veteran discharged before 1 July 1997

If the applicant is aged 18 or over on the date of application and is applying as the child of a Gurkha or Hong Kong military unit veteran discharged before 1 July 1997, they must meet all of the requirements of paragraph 13.2 of **Appendix Gurkha and Hong Kong military unit veteran discharged before 1 July 1997**.

Relationship to sponsor

The applicant must be the child of the former Gurkha or Hong Kong military unit veteran discharged before 1 July 1997 for which the former Gurkha or Hong Kong military unit veteran assumed parental responsibility before the child was 18 years of age.

Where a child is not a biological child (including adoption / de-facto adoption) the former Gurkha will be required to demonstrate that he was legally responsible for the child's welfare before the child reached 18 years of age.

Where necessary, you can carry out further checks with the Gurkha Records Office.

Where the relationship to the sponsor has not been adequately demonstrated, the application should be refused on this basis.

Living apart

The applicant must not normally have lived apart from the Gurkha or Hong Kong military unit veteran discharged before 1 July 1997 sponsor for more than 2 years.

Exceptions to this can be found in AF (GHK) 13.2.(d) of Appendix Gurkha or Hong Kong military unit veteran discharged before 1 July 1997.

If these conditions are not met and an exception does not apply, the application should normally be refused on this basis.

Unjustifiably harsh consequences and Article 8 (the right to respect for family life) of the European Convention on Human Rights (ECHR)

Under paragraph AF (GHK) 13A.1, where a child applicant who is aged 18 or over does not meet the eligibility requirements of AF(GHK) 13.2. (and does not fall for refusal on the basis of suitability grounds listed in AF (GHK) 13A.2), the decision-maker must go on to consider, on the basis of the information provided by the applicant, 13A.1, namely whether there are exceptional circumstances which would render refusal a breach of Article 8 of the Human Rights Convention because it would result in unjustifiably harsh consequences for the applicant or their family. Where such a breach occurs, the Applicant will meet the Article 8 ECHR eligibility requirement.

Article 8 of the ECHR states that:

8(1) Everyone has the right to respect for his private and family life, his home and his correspondence.

8(2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

This analysis falls into two stages:

- (a) has the applicant clearly evidenced that their circumstances do in fact engage Article 8 and that their rights would be interfered with if we did not grant such leave? And
- (b) would such an interference be disproportionate because it would result in unjustifiably harsh consequences for the applicant or their family?

Has Article 8 (family life) been engaged?

In relation to question (a), most applicants are likely to argue that their “family rights” under Article 8 are engaged (although see below for guidance on dealing with “private life” arguments). Caseworkers will note that AF(GHK) 13.2 already captures a number of the key criteria/types of dependency where we would normally expect Article 8 to be engaged and for it to be appropriate to allow an application from an adult child of a former Gurkha. AF GHK 13A.1. gives an opportunity to consider any individual facts where the level of dependency is still such as to engage Article 8, although we would expect such cases to be rare.

In order to establish that family life exists between adults who are not partners (including in relation to adult children and their parents), there must be something more than normal emotional ties. There is no presumption that a person has a family life for the purposes of Article 8, even with the members of their immediate family and neither blood ties nor the concern and affection that ordinarily go with them are, by themselves, enough to constitute family life. Whether such family life exists will depend on all of the facts of the case. Relevant factors will include but are not limited to:

- considering who are the near relatives of the applicant and the nature of the links between those relatives and the applicant
- the closeness and previous history of the family relationship including whether they lived in the same household directly prior to the sponsor settling in the UK
- the applicant's dependence on the financial and emotional support of the family that goes over and beyond normal family ties, including whether the applicant has ever been financially independent. Financial dependence on its own is not normally sufficient evidence of family life
- the forms of contact the applicant has maintained with the other members of the family with whom they are claiming to have a family life

When taking the relevant factors into account, consideration should be given to the level and frequency of communication between the family members; the regularity of visits between the sponsor and the applicant; the length of time that has passed since the sponsor settled in the UK; any other family members that the applicant could reasonably be expected to depend on; any significant change of circumstances of the applicant since their sponsor settled in the UK.

The prevailing cultural tradition and conditions in Nepal regarding adult children mean that it is normal for them to remain in the parents' household even when married. Therefore, the applicant still remaining in the household may be sufficient to establish there is family life but not is not sufficient to evidence a refusal would breach a person's right to family life in the UK.

Where the applicant has formed their own independent family unit, this is usually a strong indication that there is no longer sufficiently dependent family life with the sponsor, within the meaning of Article 8. Factors to consider in this circumstance would be the relationship between applicant and their family:

- the nature and regularity of contact between the former Gurkha or Hong Kong military unit veteran sponsor and the applicant's family
- whether they all lived as one household directly prior to the former Gurkha or Hong Kong military unit veteran sponsor settling in the UK and what the nature of the continued relationship is since the family member or members moved to the UK
- financial and emotional support for the applicant's family. If the former Gurkha or Hong Kong military unit veteran sponsor is the sole financial support, this may be a strong indication of family ties beyond the norm however should be considered alongside the other factors

- any physical or mental health issues the applicant is facing and the extent to which the former Gurkha or Hong Kong military unit veteran family member's support is required

Where sufficient evidence is presented that family life exists, such that Article 8 is engaged, the decision-maker must assess whether refusal would lead to unjustifiably harsh consequences for the applicant, family members or any relevant child which would lead to a breach of Article 8, under paragraph AF (GHK) 13A.1.

Has Article 8 (private life) been engaged?

The “private life” element of Article 8 is generally not engaged overseas, this is because private life Article 8 rights are engaged where a private life has been established, usually in the UK. Overseas applicants will not usually have established a private life in the UK.

In the case of Saleh Ali [2024] EWCA Civ 372, the Court of Appeal, found that the “private life” element of Article 8 could be engaged from overseas, where the applicant had previously lived in the UK and established their private life here, and was seeking to re-establish their private life in the UK. However, a decision to refuse entry clearance to re-establish their private life will not always cause an unjustified prevention of that private life continuing.

Where the applicant is in the UK and does not meet the requirements of AF (GHK) 13.2. you must go on to consider whether refusal would breach Article 8 (the right to respect for private and family life) of the ECHR on the basis of private life.

Unjustifiably harsh consequences/disproportionality of interference

In relation to question (b), you must consider whether refusal would result in unjustifiably harsh consequences for the applicant, which is not justified by the public interest, including in maintaining effective immigration controls, preventing burdens on the taxpayer, promoting integration, and protecting the public and the rights and freedoms of others.

“Unjustifiably harsh consequences” are ones which involve a harsh outcome or outcomes for the applicant or their family which is not justified by the public interest, including in maintaining effective immigration controls, preventing burdens on the taxpayer, promoting integration and protecting the public and the rights and freedoms of others.

This involves consideration of whether refusal would be proportionate, taking into account all the facts of the case and, as a primary consideration, the best interests of any relevant child. The case-law makes clear that where the applicant does not meet the requirements of the rules and has established their family life in “precarious” circumstances (for example when they have limited leave to enter or remain in the UK), something “very compelling” is required to outweigh the public interest in refusal. Likewise, where family life is formed or exists with a person outside the UK

who has no right to enter the UK and does not meet the requirements of the rules for entry clearance, Article 8 does not require that they be granted entry, in the absence of such exceptional circumstances.

Relevant factors include:

- **historic injustice in relation to Gurkhas** - the Court of Appeal in the case of Gurung and others [2013] EWCA Civ 8, and the Upper Tribunal in Ghising & others (Gurkhas/BOCs; Historic Wrong; Weight) [2013] UKUT 567 confirmed that the historic wrong suffered by Gurkha ex-servicemen (i.e. that until 2004 they were not part of the SSHD's general policy to allow non-British Commonwealth serving and former members of the British armed forces to obtain settlement on discharge) should be given substantial weight - in particular, where Article 8 is engaged and, but for the historic wrong, the adult child would have been settled in the UK long ago, this will normally override any arguments about the public interest in maintaining a firm immigration policy. In doing so:
 - you should consider whether the "historic wrong" is in fact engaged on the facts of the case you are considering - the historic injustice factor is unlikely to be relevant to an applicant who was already an adult at the time of the Gurkha parent's discharge and / or the Gurkha parent's application under the route (if it happened many years before and there is no evidence of whether the parents would have sought to bring the adult child sooner but could not do so)
 - even where historic injustice is engaged, this may not necessarily mean that refusal is disproportionate / unnecessarily harsh if there are additional factors over and above the public interest in maintaining firm immigration policy (for example, bad immigration history, criminal behaviour – c.f. listed suitability criteria at 13A.2) - the Upper Tribunal has also upheld cases where the interference with family life was fully proportionate despite any historic injustice (for example, Sunawar HU/12439/2017 where the judge was critical of the lack of explanation as to why a 36-year old adult child in the absence of any health-related issue had been unable to engage in productive or resourceful work and maintain themselves)
- **serious cultural barriers to relocation overseas** - this might be relevant in situations where a person would be so disadvantaged by the social, religious, or cultural situation in a particular country that they could not be expected to live there - such a barrier must be one which affects their fundamental rights, cannot reasonably be overcome, and would present a very serious obstacle:
 - in so doing, you should consider the situation in practice and not just what is provided for in law - so, the fact that a country has a law which criminalises same sex sexual acts would not be sufficient to show that a homosexual applicant would face very significant hardship living in that country if the authorities in practice do not prosecute cases and there is no real risk of prosecution or persecution
- **the impact of a mental or physical disability or of a serious illness which requires ongoing medical treatment** - living in or moving to another country may involve a period of hardship for any person as they adjust to their new surroundings, whether or not they have a mental or physical disability or a serious illness which requires ongoing medical treatment - but independent

medical evidence could establish that a physical or mental disability, or a serious illness which requires ongoing medical treatment, would lead to very serious hardship: for example, due to the lack of adequate health care in the country where the applicant would be required to continue or resume living - as such, refusal of permission to stay could result in a breach of Article 8

- **the absence of governance or security in another country** - in some circumstances, for example where civil society has broken down as a result of conflict or natural disaster (and such breakdown extends to the country as a whole), requiring an individual to commence living there may give rise to very serious hardship that renders refusal unjustifiably harsh - Foreign Office travel advice should not normally be referred to, as that is generally aimed at tourists choosing to visit a country for specific purposes and a limited period - rather, you should consider the relevant country information and guidance in relation to the country or countries in which the applicant could lawfully reside
- **the immigration status of the applicant (if applying in-country)** - you should take into account the circumstances of the applicant's entry to and stay in the UK and the proportion of the time they have been in the UK legally as opposed to illegally - did they establish their right to an Article 8 consideration at a time when they were in the UK unlawfully? Article 8 rights formed in the knowledge that a person's stay here is unlawful should be given less weight (when weighed against the public interest in their removal) than rights formed by a person lawfully present in the UK. Is the applicant in the UK as a visitor, meaning that they have undertaken to leave the UK at the end of their visit as a condition of their visit visa or leave to enter?
- **the nature of the existing family support/ties and the extent to which these could continue cross-border** - for example, where any financial support/remittances could continue cross-border, refusing to allow the applicant to come to settle in the UK would be unlikely to disproportionately interfere with that form of support and therefore unlikely to be a breach of Article 8

Cumulative factors should be considered. Cumulative factors weighing in favour of the applicant should be balanced against cumulative factors weighing in the public interest in deciding whether refusal would breach Article 8 for the applicant.

Examples of circumstances which are not likely to bring about a breach Article 8 include:

- lack of knowledge of a language spoken in the country in which the applicant would be required to live - although inability to speak the language of that country may cause difficulties, it is very unlikely to amount to a breach of Article 8 as many people successfully move to a country where, at first, they do not speak the language
- being separated from extended family members, such as where the parents or siblings of the applicant or their partner live in the UK, unless there are particular factors in the case to establish the unusual or exceptional dependency required for Article 8 to be engaged
- a material change in the quality of life for the applicant in the country in which they would be required to live, such as the type of accommodation they would live in, or a reduction in their income or standard of living, unless this would

lead to particular hardship or there were particular exceptional factors in the case

Criminality checks

If there is a positive result on criminality checks, you must contact the Armed Forces policy team for further guidance.

Decision on an application as a partner, bereaved partner or child of a Gurkha or member of a Hong Kong military discharged before 1 July 1997

If you are satisfied that all the suitability and eligibility requirements for either a partner, bereaved partner or child of a Gurkha or Hong Kong military unit veteran are met, the application for settlement will be granted, otherwise the application will be refused.

If the application as a partner, bereaved partner or child is refused, the applicant can apply for an Administrative Review under [Appendix AR: Administrative Review](#).

Decision on an application as an adult child of a Gurkha or member of a Hong Kong military discharged before 1 July 1997

If you are satisfied that all the suitability and eligibility requirements for an adult child of a Gurkha or Hong Kong military unit veteran are met, the application for settlement will be granted, otherwise the application will be refused.

If the application as an adult child is considered under paragraph AF (GHK) 13.2. and is refused, the applicant has the right to appeal to the Immigration Tribunal.

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