

Aug/03

**IMMIGRATION DIRECTORATES' INSTRUCTIONS**

**ANNEX L**

**CHAPTER 1  
SECTION 3**

**RETURNING RESIDENTS**

**AFTER ENTRY APPLICATIONS**

**1. INTRODUCTION**

There is no after entry provision within the Rules for a person to be granted indefinite leave to remain as a returning resident after he has been admitted in another temporary category. However, a person may have been given leave to enter for 2 months on Code 1 and advised by an immigration officer to apply to the Home Office to regularise his position. This could be because, although the person may have claimed to be a returning resident, it may not have been clear at the time of his arrival that he qualified to be treated as such. Furthermore, immigration officers should *not* open land a person where it is clear that he is not exercising his right as a returning resident, for example, because he only intends to stay in the United Kingdom for a few weeks holiday.

**2. FACTORS TO BE CONSIDERED**

A person should normally be granted indefinite leave to remain if he:

- had indefinite leave on the last occasion he left the United Kingdom; and
- always wanted to be, and could have been, treated as a returning resident when he last entered the United Kingdom; and
- applied for indefinite leave to remain within his *initial* limited leave.

The second requirement above covers both those who can satisfy the caseworker that their application for returning resident status was misunderstood by the immigration officer and those who wished to be admitted as a returning resident but were granted admission in a temporary capacity. It does *not* cover a person who would have sought entry as a returning resident if he had been aware that he could do so. A person who has been away from the United Kingdom for more than 2 years must satisfy the requirements above as well those set out in **ANNEX K**.

**2.1. Applications which do not meet the above requirements**

Applications which do not meet the requirements set out in paragraph 2 above should be considered in the light of all the circumstances. However, the exercise of discretion to grant indefinite leave outside the Rules should be limited to wholly exceptional cases, such as where the applicant has lived in the United Kingdom for most of his life. Refusal should be the normal course of action.

An application from a person who was admitted to the United Kingdom in another category, for example as a visitor, but who then has a change of mind and decides to apply for indefinite leave as a returning resident, should normally be refused as a returning resident, although he may of course qualify for further leave under another category of the Rules. What should always be borne in mind is that ***the onus is on the applicant*** to show that he did not change his mind and that it was always his intention to resume his residence in the United Kingdom.

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