



Home Office

Nationality policy: assessing ordinary residence

Version 2.0

Contents

Contents.....	2
About this guidance.....	3
Contacts	3
Publication	3
Changes from last version of this guidance	3
Ordinary residence	4
Voluntary residence	4
Purpose of residence.....	5
Ordinarily resident categories.....	6
When a person becomes ordinarily resident	7
People that cannot be considered ordinarily resident.....	8
Absences during a period of residence	9
Purpose of absence.....	9
Ordinary residence of children	10

About this guidance

This guidance tells UKVI caseworkers and HMPO examiners how to consider whether an individual is ordinarily resident in the UK.

Contacts

If you have any questions about the guidance and your line manager or senior caseworker cannot help you or you think that the guidance has factual errors then email the Nationality 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 **25 October 2017**

Changes from last version of this guidance

Minor housekeeping changes.

Related content

[Contents](#)

Ordinary residence

This section tells you about the factors which determine ordinary residence.

This section tells you about the factors which determine ordinary residence. The [Immigration Act 1971](#) and [British Nationality Act 1981](#) state that a person is 'settled' in the UK if they are ordinarily resident in the UK without being subject to immigration time restrictions. A child born in the UK will be a British citizen if either parent is settled in the UK at the time of the birth. For an explanation of the term 'parent', see the general information guidance.

The term ordinary residence is not defined in the immigration or nationality acts and has not been defined in any Act of Parliament. The leading case in this area is [R v Barnet LBC ex parte Shah \[1983\] 1 All ER 226](#). The House of Lords found that the concept of ordinary residence implied:

- ordinary residence is established if there is a regular habitual mode of life in a particular place for the time being, whether of short or long duration, the continuity of which has persisted apart from temporary or occasional absences, residence must be both:
 - voluntary
 - adopted for a settled purpose
- a person can be ordinarily resident in more than one country at the same time, distinguishing it from domiciled
- ordinary residence is proven more by objective evidence than evidence of an individual's state of mind at a point in time

Although Shah was concerned with the meaning of ordinary residence as used in the Education Acts, the decision is widely recognised as having wider application and must be followed when considering applications for nationality.

You must use caution when applying the approach outlined in the third bullet above. It was held in *Siggins* [1984] Imm AR 14 that there are times when a court can and must properly use hindsight to consider whether a person's purpose has been followed up by their subsequent action. Therefore a person's intentions or state of mind at the date on which they are seeking to be regarded as ordinarily resident in a particular place needs to be taken into account. As do their subsequent actions where they are relevant to that intention or state of mind. Where there is evidence, from either the time of the intention or subsequent actions which either bears out or contradicts an individual's claim to have been ordinarily resident, you must consider all of the available information to produce a balanced decision that will be defensible on challenge.

Voluntary residence

Unless you have clear evidence that the person is in a country or territory against their will, you must assume that residence there has been voluntarily adopted. This

also applies to minors even though the decision is likely to have been taken on their behalf by their parent or guardian.

Purpose of residence

When assessing if an individual adopted residence for a settled purpose you must consider whether the residence shows a sufficient degree of continuity. This does not mean that the person must intend to stay in the place indefinitely. They may have a settled purpose even though it is for a strictly limited period. The purpose may be general or specific, such as for education, employment, health or family.

Settled in this context means fixed or predetermined, as opposed to merely casual and should not be confused with 'settled' status under the Immigration Rules or being permanently resident under European Economic Area regulations. A person may be ordinarily resident in the UK whilst still being liable to removal or deportation.

Related content

[Contents](#)

Ordinarily resident categories

This page tells you about the categories who can be classed as ordinarily resident.

Residence in a territory for most of the purposes for which people can enter is capable of constituting ordinary residence. In particular, lawful residence in the following categories is likely to constitute ordinary residence:

- entry for settlement
- employment
- business
- self-employment
- study
- retired persons
- working holidaymakers

Related content

[Contents](#)

When a person becomes ordinarily resident

This page tells you about when a person becomes ordinarily resident in the UK.

A person may become ordinarily resident on arrival, and probably will if entering the territory for settlement or one of the purposes leading to settlement. It is possible for a person initially entering for a temporary purpose not constituting ordinary residence, to become ordinarily resident through a change in the quality and purpose of the residence. Where it is not possible to establish the date on which a person became ordinarily resident, it may be reasonable to treat them as having been ordinarily resident from the date of their arrival.

Related content

[Contents](#)

People that cannot be considered ordinarily resident

This page tells you about the types of people who are not classed as ordinarily resident in the UK.

In the Shah judgment, Lord Scarman said, “If a man’s presence in a particular place or country is unlawful, for example, in breach of the immigration laws, he cannot rely on his unlawful residence as constituting ordinary residence...” This is affirmed for nationality purposes by [section 50\(5\) of the British Nationality Act 1981](#).

A person may be considered to be in breach of the immigration laws if his or her presence contravenes a deportation order or if the person is an overstayer. In the latter case, the Immigration Appeal Tribunal has said that it is irrelevant, for right of abode purposes, that the person’s stay was subsequently regularised by the grant of leave to remain (Cheong (4390), Lai(3087)).

In the Shah judgment, Lord Scarman said that in order to determine whether someone was ordinarily resident it must be asked whether they have “shown that he has habitually and normally resided in the UK from choice and for a settled purpose throughout the prescribed period, apart from occasional or temporary absences.”

A person who is in prison is not residing in the UK through choice and so cannot be considered to be ordinarily resident in the UK during their time in prison.

Related content

[Contents](#)

Absences during a period of residence

This page tells you how to consider periods of absence from the UK.

Where there have been absences in a period of residence, you must decide whether:

- they can be regarded as temporary absences, despite which a regular habitual mode of life has continued
- the absences are such as to destroy the degree of continuity necessary to establish and maintain ordinary residence

Purpose of absence

The duration of an absence is less important than the reason for the absence. For example, in [R v Immigration Appeal Tribunal ex p Ng \[1986\] Imm AR 23](#), the subject was required to demonstrate that he had been ordinarily resident in the UK for a period of 5 years. He travelled to Hong Kong on 24 August 1967, having been ordinarily resident in the UK for 4 years 360 days. His employment ceased on 5 August 1967, but he was contracted and paid up until 31 August. The Divisional court agreed with the tribunal's view that since he had left the UK with no discernible intention of returning, he had ceased to be ordinarily resident at that point. Had he only intended to go to Hong Kong for a holiday, his ordinary residence would have continued.

This approach is further borne out by [Stransky v Stransky \[1954\] P 428](#), in which a woman was required to demonstrate that she had been ordinarily resident in England for the preceding 3 years. Despite overseas absences during this period of more than 15 months it was held that she had remained ordinarily resident in England.

The maintenance of home and family in a particular country during an absence abroad is not conclusive evidence that ordinary residence has continued, although it will often be helpful, as in the case of Stransky, in assessing whether the absence was a temporary one. You must not take the fact that the individual has been re-admitted to the UK as a returning resident as evidence that ordinary residence in the UK has been maintained during the absence.

Related content

[Contents](#)

Ordinary residence of children

This section tells you how a parent's residence impact on where a child is considered to be ordinarily resident.

As a general rules you should consider that a child under the age of 16 shares the same place of ordinary residence as their parents. This was held to be the position in *Re P(GE) (an infant)* [1964] 3 All ER 977 even though the child in question was away at boarding school and later taken abroad by one of the parents without the consent of the other. In *Telles* (2695) the Immigration Appeal Tribunal held that a child did not cease to be ordinarily resident in the UK as long as their parents continued, despite temporary absences, to be ordinarily resident here.

The ordinary residence of older children, those whose parents are living apart and those who have been left in the care of other relatives may be more difficult to determine. If the child's age and means are such that they are capable of deciding for themselves where to live, their place of ordinary residence will be a separate consideration from their parents. Where a parent is no longer living with their child on a permanent basis you will still need to consider if there is sufficient contact for them to be considered as part of the same household. In such cases it is more likely that the child will be ordinarily resident with the parent who is responsible for their day-to-day care.

Related content

[Contents](#)