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CHAPTER 9 SECTION 5

IMPLEMENTATION: EXTENSIONS, UPGRADES AND ILR

1. INTRODUCTION

Applications for *extensions of leave* to remain by those granted exceptional leave to enter/remain (ELE/R) will normally be granted in the absence of countervailing factors. Guidance on cases where it might be appropriate to refuse further leave is given in the instruction on *Curtailment*.

Applications for *indefinite leave to remain (ILR)* will normally be granted once the applicant has completed 4 years leave if he has ELR. Again, guidance on the occasions when it may be appropriate to refuse ILR once the residence criteria have been satisfied are found in the instruction on *Curtailment*.

2. Duration of further exceptional leave

ELE/R will normally be granted for a period of 4 years, after which the holder will become eligible for the grant of indefinite leave to remain (ILR).

To ensure that this change in practice does not result in unfairness, the following transition arrangements have been agreed for handling applications for further LTR/settlement (ILR) from those with ELE/R. The aim is to ensure that no advantage is afforded to those granted ELE/R immediately after the change over those granted ELE/R before, and that all those granted before 27 July 1998 are considered for settlement by 27 July 2002 (4 years after the change).

Under the transition arrangements people will be required to complete varying periods of leave before being eligible to apply for settlement. These periods are determined by the year in which they were initially granted ELE/R and are set out in the centre row in the table below.

ELR grant	1992	1993	1994	1995	1996	1997	1998	1.9.98
Years of leave before ILR to be considered	7	7	7	6	6	5	4	4
ILR	1999	2000	2001	2001	2002	by	by 27.7.02	27.7.02

						27.7.02		
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When an application for further ELR is received it will normally be appropriate for caseworkers to grant leave to allow the applicant to complete the normal qualifying period for settlement (ILR). This will vary according to the year in which ELE/R was first granted and no one granted ELE/R before 27 July 1998 should be given leave beyond 27 July 2002.

2.2. **Granting further exceptional leave**

The implementing officer should:

- i) Prepare a RON 53, deleting the sentence about the requirement to register with the police. If the applicant has one endorse the police registration certificate (PRC) with the exempt stamp and cross through the back cover.
- ii) Endorse the passport.
- iii) Send the passport and RON form second class to the applicant.
- iv) Note INDECS and IMP1.
- v) Send the file to lay-by.

It is not necessary to issue a further GEN 19, as the original still applies.

2.3. **Refusing further exceptional leave**

If the application was made in time and in country the implementing officer should prepare an APP101 or APP101A depending on whether the leave remaining is extant or VOLO.

The application should be refused under paragraph 322 (1) of HC 395. The refusal wording should express that the Secretary of State is not satisfied that the leave sought is covered by the Immigration Rules and that he is not prepared to exercise his discretion in granting leave outside the Immigration Rules.

If the application was made out of time, it should be refused using form RON 110 without a right of appeal. The file should then be sent to ISED to continue with deportation action.

3. **UPGRADE FROM EXCEPTIONAL LEAVE TO REFUGEE STATUS**

3.1. **Granting refugee status**

Persons upgraded to refugee status should be granted asylum according to the normal procedures for in country cases. Refugee status should be granted from the date that the GEN 22 is completed. It should not be backdated.

INDECS and Refugee Index should be noted by entering the details in the Appeals and Changes to Decision section of the initial record.

If the refugee was originally a port applicant, the caseworker should also complete form IS79 (relating to the Carriers Liability Act), and include the names of dependants who are also granted refugee status, and place it on the file. Once all other action has been completed, he should forward the file to ALU, who will forward it to Carriers Liaison Section for any necessary action.

3.2. **Refusing refugee status**

If it is decided to refuse refugee status, the caseworker will have to decide whether the application falls to be treated as a fresh application or further representations. For guidance, please see the instruction on *Further Representations and Fresh Applications*.

If the application is to be treated as a fresh application, it should be refused in accordance with normal procedures (i.e. with an 8(2) right of appeal if the applicant had extant leave when he applied).

If the application is to be treated as fresh representations, the caseworker should send a letter to the applicant explaining that the representations have been considered but the Secretary of State has decided that they do not constitute a fresh application and he is not prepared to reverse his decision. For further details please see the instruction on *Further Representations and Fresh Applications*.

4. **GRANTING INDEFINITE LEAVE TO REMAIN**

4.1. **Indefinite leave to remain for those with exceptional leave**

Applications for ILR for those people with exceptional leave are normally considered by AEAD and instructions are given in the IDIs.

4.2. **Indefinite leave to remain for refugees**

From 27 July 1998 all people accepted as refugees should be granted ILR when that decision is made. Those accepted as refugees before 27 July 1998, but who have not been given ILR, will not be required to complete 4 years leave and will be eligible to apply for ILR at any time after that date.

All applications for ILR made by or on behalf of refugees should be referred to

the ILR Unit. The implementing officer should:

- i) Stamp the minute sheet with the ILR block-stamp.
- ii) Complete status letter GEN 22 (one for each person - children under the age of eighteen to be included on the mother's or father's document depending on which travel document they are included). Place a copy of each GEN 22 on file.
- iii) Endorse the back page of the Police Registration Certificate if the applicant has one and cross through the printed instructions of the back cover. (The granting of ILR means that an applicant who previously had to register with the police no longer needs to meet this requirement.)
- iv) Notify INDECS of the grant of ILR (code 4A for main applicant, 4AS for spouse, 4AC for child and 4AD for other dependants).
- v) Prepare and address envelope in which documents will be returned to the applicant.
- vi) If the applicant holds a travel document, place a vignette in the travel document showing that ILR has been granted (national passports should *not* be endorsed).
- vii) Despatch the documents to the applicant.
- viii) If the applicant has an application for travel documents outstanding, pass the file to TDS.
- ix) After all action has been completed, pass the file to the Asylum Fingerprint Bureau to destroy the fingerprints.

5. REFUSING INDEFINITE LEAVE TO REMAIN FOR REFUGEES

People accepted as refugees will *normally* be granted ILR when first recognised as a refugee or upon request. However, on rare occasions it might be appropriate to refuse ILR if an applicant has been convicted of a serious offence.

5.1. Refusal because of conviction for a serious crime

If ILR is refused because a serious crime has been committed it may be decided to grant further leave to remain in order for further character checks to be made when the applicant next applies. In this case the application should be refused using form APP102, granting a further twelve months LTR.

If it has been decided to refuse ILR and not to grant further leave, the applicant

should be refused using form APP101 quoting paragraph 322 (1) of HC 395 if the application. (For wording see paragraph 5.1.) This will only be appropriate if it has been decided to revoke the persons refugee status (see **Chapter 15, Section 2**).

In such cases the following action should be taken:

- i) A covering letter should be prepared explaining why ILR has been refused.
- ii) The APP 101 or 102 (as above) should be completed, granting a further twelve months leave to remain as a refugee, if appropriate, and a copy placed on file.
- iii) The APP form, covering letter, passport and any other original document should be sent to the applicant or his representative, by first class post, together with appeals form APP1 and an Immigration Appeals envelope (*not* an Asylum Appeals envelope - the right of appeal is under section 14 (1) of the 1971 Act). Endorse the police registration certificate, if there is one, with the exempt stamp and cross through the back cover.
- iv) The file should be retained for one month to await a possible appeal.
- v) If, in a case where no further leave has been given, no appeal is received, caseworkers should consult the Deportation Group as this action will only have been taken in the most serious cases. In cases where a further period of leave has been given, the file should go to layby.

Enquiries to: APU ext. 3449/3446.

Further advice: see also the instructions on *Curtailment* and *Further Representations and Fresh Applications*.