

Indefinite Leave to Remain (ILR) Application

Image
Passport and or type unknown

Q&A about ILR application and beyond.

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3C Leave

Q: What is 3C Leave?

A: The purpose of section 3C leave is to prevent a person who makes an in-time application to extend their leave from becoming an overstayer while they are awaiting a decision on that application and while any appeal or administrative review they are entitled to is pending. Learn more: <https://www.gov.uk/government/publications/3c-and-3d-leave/3c-and-3d-leave-accessible>

Q: If an application for ILR is unilaterally varied by the Home Office into an application for further leave (rather than refused) and the individual then fails to pay the IHS that means the application is treated as an invalid application for further leave, rather than a refused application for ILR. As a consequence of this, an individual who thought they had 3C leave whilst their valid ILR application was pending will suddenly discover their application has been deemed invalid and that they never had the 3C leave they and their employer/landlord thought they had. Is it possible to confirm in line with the Supreme Court's decision in the case of Mirza & Ors, R (on the applications of) v Secretary of State for the Home Department [2016] UKSC 63 (14 December 2016) (bailii.org) about invalidity due to failure to enrol biometrics, that 3C leave will only end once the Home Office has served a notice of invalidity? That would seem consistent with the second paragraph on page 7 of 3C and 3D leave (publishing.service.gov.uk)

A: You'll be contacted by UKVI either by email or letter and asked to pay the immigration health surcharge (IHS). If you failed to pay the IHS, the application is considered as invalid and the leave expired. Refer to Regulation 37 of the 2011 Regulations, if an application is not accompanied by the specified fee, it is considered as not validly made. 3C Leave does not apply to invalid application in accordance with the rules.

Q: If someone applies for ILR but they are refused and granted permission on the BN(O) route instead, can they challenge their ILR refusal? What will their permission be from the time they apply for ILR to the refusal? Will they have 3C even if their application is refused?

A: If an application for settlement is refused, there is no right of appeal against that decision. However, if they think the Home Office has made an error in considering their application, they can apply for an administrative review. You must apply for AR within 14 days (inside the UK) and 3C leave is triggered.

Administrative Review

Q: When an application for ILR is varied to LTR, can an applicant challenge the ILR decision? What is the process?

A: If an application for settlement is refused there is no right of appeal against that decision. However, if they think the Home Office has made an error in considering their application, they can apply for an administrative review. They have 14 days (inside the UK) to submit AR application and 3C leave is triggered.

If settlements requirements are not met, but may still meet all the suitability and eligibility requirements, it is likely to be granted permission to stay for 30 months with no access to public funds, permission to work (except for employment as a professional sportsperson, including as a sports coach), permission to study (subject to the ATAS condition in Appendix ATAS). Applicant will be contacted by UKVI either by email or letter and asked to pay the immigration health surcharge (IHS) to complete the application. If applicant failed to pay the IHS, the application is considered as invalid and the leave expired.

Q: If the case worker is minded to refuse the ILR application and deems there is no prospect of further leave to remain being granted, then they will go ahead with the refusal. In these circumstances the individual can request an administrative review of that refusal and will have 3C leave whilst this is completed. However, if the case worker is minded to refuse the ILR application and instead unilaterally amends the application to make a grant of further leave, the individual is left with the choice of either accepting the decision about their ILR application and taking the further leave instead, or refusing to pay the IHS so the application is invalid and they no longer have 3C leave.

On the basis administrative review can be used where an application is granted but the applicant is unhappy with the amount or conditions of leave, are you able to confirm that it is possible for an individual in these circumstances to pay the IHS so as to at least get further leave, but then still go back and use administrative review to challenge the decision not to grant ILR?

A: If applicants believe it is a caseworking error led to a refusal, they can apply for Administrative Review. Application must be submitted within a strict deadline (within 14 days inside the UK). Once they submitted the application, if their visa have expired, they will not usually be removed from the UK until their review has been completed, this is called 3C Leave. Their request for an administrative review will be withdrawn (cancelled) if they make any other immigration or visa application. Also, their request will be rejected if they ask for a review of a previous decision after submitting a new application.

Adult Dependent Relative

Q: For Adult Dependent Relative (elderly), if they don't have UK bank accounts, NI, utility bill or tenancy agreement in their names, how can they prove their residency period in the UK?

A: There is no a fixed list of documents applicants are required to submit. Medical record from GP could be a source to prove Adult Dependent Relative's residency period.

Q: Can adult dependant apply for extension alone if they are on 2.5 years visa if their sponsor is on 5 years visa?

A: Yes for Partner, ADR and Dependent child over 18. However, applicants applying through the BN(O) Household Member Route who are the adult child of the partner of a BN(O) status holder cannot apply to the BN(O) route independently and need to apply together with the BN(O) status holder who is the main applicant and they are granted the same length of permission they have applied.

Application Fee Refund

Q: When an application for ILR is varied to LTR, will the applicant get a refund of their ILR fee?

A: Application fee for ILR will not be refunded, but applicants are not required to pay for the fee of Leave to Remain, but the IHS fee.

Children Born in the UK

Q: Do the UK born children need to apply for ILR together with their parents?

A: Scenario 1: If at the time of birth, his father or mother is settled or is a British citizen, he is automatically British. Scenario 2: If at the time of birth his father or mother is not settled or is a British citizen, he is not a British. He is entitled to register as a British after his father or mother obtained settled status. Children in both scenario are not required to apply for ILR with their parents, they can jump to be a British or to register as a British Citizenship after parents got settled status.

Q: In a situation that children were born in the UK after 2 years parents arrived in the UK. Parents are eligible to apply for ILR after 5 years but their visa valid dates are in line with parents' visa period and is about to expire when parents are applying for ILR. What should they do? What if parents used priority services to obtain settled status in five working days and children are still valid. Can they apply for British citizenship straight away?

A: Applicants are required to have a valid visa for any applications. If children's visa expires before their parents obtained settled status, they will need to extend their visa and then to register for British Citizenship when their parents got their settled or British status. If parents has obtained thier settled status and children's visa is still valid, they can apply to register for British Citizenship straight away.

Citizenship

Q: Which route should I choose for Citizenship application? Naturalisation or Registration?

A: For BN(O) status holder (BN(O) passport holder), you can apply for citizenship by registration or naturalisation. For BN(O) visa holder (18 or above) who has HKSAR passport only, you can apply by naturalisation. For minor (under 18), you can apply by registration.

Dependent Child over 18

Q: If the main applicant passed away during the 5+1 period, can the partner and/or dependent child apply ILR individually?

A: Refer to Immigration Rules HK 57.4(a), dependent child can apply ILR with the surviving parent.

Q: One parent working aboard to support the family financially which will not be eligible when the family members apply for ILR. In this case, can the under 18 children apply with only one parent? If not, does this means they need to apply for visa extension to wait for one parent to be settled first?

A: Refer to Immigration Rules HK 57.4, Children under 18 are required to apply for settlement with both parents who are British citizen, or be settled, unless one parent is deceased; one parent has sole responsibility for the child's upbringing, or there are serious and compelling reasons to grant the child settlement. In this situation, the parent who met the ILR requirement to apply for ILR as soon as she is eligible, the child will need to extend the visa with the other parent until they are eligible to apply for ILR.

Q: Can adult children apply for ILR individually?

A: They can apply ILR individually if they are 18 or above.

Dependent Children under 18

Q: How can children prove their residency if they do not have a job?

A: It can be proved by providing school record, e.g. examination or assessment reports, a letter of school to confirm children are studying in the school, etc.

Domestic Abuse

Q: Can domestic abuse survivor children / children from family undertaking divorce apply for ILR with only one parent?

A: Yes, they can. Evidence or proof are required to support the application.

English Requirement

Q: What evidence is required to show proof the applicant meets the English Language requirement at settlement?

A: Refer to Appendix English Language (<https://www.gov.uk/guidance/immigration-rules/immigration-rules-appendix-english-language>)

EL 5.1. An applicant will meet the English language requirement if they have an academic qualification which meets one of the requirements at EL 5.2. and is proven by the required evidence under EL 5.3. or EL 5.4.

EL 5.2. The requirements are that the applicant has:

- (a) a bachelor's degree, master's degree or doctorate awarded in the UK; or
- (b) a degree or degree-level qualification taught in a university or college in a majority- English-speaking country listed in EL 4.1. (except Canada), or Ireland, which meets or exceeds the recognised standard of a bachelor's degree, master's degree or doctorate awarded in the UK; or
- (c) a degree or degree level qualification which meets, or exceeds, the recognised standard of a UK bachelor's degree; master's degree or doctorate and was taught or researched in English.

EL 5.3. The requirement at EL 5.2. must be proven by one of:

- (a) a certificate from the awarding body; or
- (b) a transcript issued by the university or college that awarded the qualification; or
- (c) an official letter from the university or college that awarded the qualification containing information equivalent to a degree certificate.

EL 5.4. If the qualification was awarded by a body from outside the UK, the requirement at EL 5.2. must, in addition to the requirement at EL 5.3, be proven by confirmation from Ecctis that the qualification meets the requirements at EL 5.2(b) or EL 5.2(c).

An applicant will meet the English language requirement if they have provided a valid digital reference number from an approved provider showing they have passed an approved English language test to the required level in each required component as set out in the relevant route, in the 2 years before the date of application.

The list of approved tests and providers, updated from time to time, can be found at <https://www.gov.uk/guidance/prove-your-english-language-abilities-with-a-secure-english-language-test-selt#approved-test-providers-and-approved-tests>.

EL 7.1. An applicant will meet the English language requirement if they have a GCSE, an International GCSE, an A level, a Scottish National Qualification at level 4 or 5 or a Scottish Higher or Advanced Higher in English (language or literature) that was awarded:

- (a) by an Ofqual (or SQA, Qualifications Wales or CCEA) regulated awarding body; and
- (b) following education undertaken in a UK based school which began while they were aged under 18.

EL 7.2. The requirement at EL 7.1. must be proven by either:

- (a) a certificate from the awarding body; or
- (b) an official transcript issued by the awarding body

Q: According to the appendix EL 5.4.

If the qualification was awarded by a body from outside the UK, the requirement at EL 5.2. must, in addition to the requirement at EL 5.3, be proven by confirmation from Ecctis that the qualification meets the requirements at EL 5.2(b) or EL 5.2(c).

On the frontpage of Ecctis website, there are two services available:

- 1. UK ENIC / Statement of Comparability**
- 2. Visas and Nationality / Visas and Nationality Service (English Proficiency)**

As stated in appendix EL 5.4, it only mention “confirmation from Ecctis” but haven’t specify for which service. It is common for HKers who have a degree or above to have applied the first service for work and study. A clarity regarding a statement of comparability is eligible to apply ILR/citizenship will be very helpful.

A: Refer to ECCTIS website (<https://www2.ecctis.com/qualifications/van>), please select VISAS and NATIONALITY SERVICE (ENGLISH PROFICIENCY). This service is for those who would like to use Bachelor, Master or PhD degree(s) to demonstrate the level of your qualification and your English proficiency for a UK visa application.

Q: Does GCSE or A level results accept for ILR application?

A: GCSE and A level results are accepted for ILR application. Refer to EL 7.1. An applicant will meet the English language requirement if they have a GCSE, an International GCSE, an A level, a Scottish National Qualification at level 4 or 5 or a Scottish Higher or Advanced Higher in English (language or literature) that was awarded. Details please refer to Immigration Rules Appendix English Language - Guidance - GOV.UK

Exceptional Circumstances

Q: What constitutes compelling reasons for maintaining continuous residence needed for ILR? Could this be aligned with the rules for EU nationals and eligibility for settled status?

A: Basic rule is that applicants are not out of the UK for more than 180 days in any 12 months, but they can apply for exemptions if they have what Home Office called exceptional circumstances. It has to be very severe, e.g. a life threatening illness for the applicants or their family members. Applicants will need to prove it by providing evidence.

Q: Does study/placement abroad count as exceptional circumstances for the absence's exemption?

A: Study/placement abroad are unlikely to be considered as exceptional circumstances.

Extension of Visa

Q: Are there any guidance on extending the BN(O) visa?

A: <https://www.gov.uk/british-national-overseas-bno-visa/extend-your-visa>

Q: Can a BN(O) visa holder who is applying for a BN(O) visa extension, apply jointly with their parents as their dependant if they previously applied alone?

A: Each family member will need to make their own application. Adult dependent relative can apply to extend their visa at the same time with you or they can apply to extend their visa separately from you and do not need to prove their relationship to you.

Q: If someone has applied for an extension but they have more than 28 days permission left, can we do anything if it has already been granted?

A: Visa extension starts on the date it is granted. It is not likely to be changed after approval. There is no refund of application fee if there's overlapping of visa period. However, IHS fee can be refunded in six-month period if it's overlapped.

Q: Why do applicants need to apply for extension on the BN(O) route within 28 days of their current visa expiring?

A: It is to meet the 5 years continuous residency period of ILR without the need to extend your visa again

Good Character

Q: Are there any implications (“good character”) when applying for citizenship for those who entered the UK as visitors and then applied for the BN(O) visa?

A: No implications for citizenship application. Applicants can enter the UK as visitors and then to apply for BN(O) visa inside the UK if you meet the eligibility and suitability requirements.

Q: I haven't actively filed a tax return in the past 5 years because I did an online self-assessment and it said I don't need to file a tax return. Will this affect my application for ILR and Citizenship?

A: Home Office would look at if your tax affairs are in order. Only to the extent that if you were in dispute with the taxation or you haven't paid something you should have paid. In this situation if no taxation was owed, it will not affect your application.

Q: Do we need to declare driving offences for the application?

A: Yes. Driving offences DO need to be declared. You can check with DVLA for the penalties or points deducted and to make a declaration.

Q: Minor car accident settled by Car Insurance company and it was not reported to police. Do I need to declare it for ILR application?

A: Minor accident is not a criminal offence, you do not need to declare it.

Q: If I failed to pay any taxation but it has been repaid and sorted out, do I need to declare it?

A: No, you don't. Unless you have had something criminal or a court judgment, e.g, they sued you for this money and got a judgment from the court, then you will need to declare it.

Identity Proof

Q: Can you apply for ILR without a valid ID? Children need to renew their identity/travelling document by turning 11 years old in HK, which they are not willing to travel back to Hong Kong for the renewal.

A: Refer to paragraph 34 (vii) of the Immigration Rules, the applicants need to provide a good reason beyond their control why they cannot provide proof of their identity. The applicant should have made every effort to provide an alternative proof of identity and should not have manufactured the circumstance leading to its absence. Applicants are not willing to renew is not likely to be considered as a good reason. An applicant must provide a valid passport or other travel document which satisfactorily establishes their identity and nationality. You will need to explain why you cannot provide a valid ID if you failed to do so. You will need to provide evidence that you have tried but failed to get one, e.g. a letter from the Hong Kong Government to refuse your passport application.

Q: What evidence does a BN(O) visa holder need to supply when applying for settlement if they do not have a valid passport as they were unable to go to the Chinese Embassy due to fear of potential repercussions?

A: Refer to paragraph 34 (vii) of the Immigration Rules, the applicants need to provide a good reason beyond their control why they cannot provide proof of their identity. They will need to provide evidence that you have tried but failed to get one (e.g. a letter from the Hong Kong Government to refuse your passport application). A valid passport is required for the application. If you have exceptional circumstances that you will not be able to provide a valid passport for the application, please contact KIRKLEES Citizens Advice & Law Centre so that they are able to advise you properly on your situation.

Q: I applied for my BN(O) visa by using my old passport details. I applied e-VISA months ago with my new passport details. Should I upload my old passport details on the e-VISA system? If we don't update them, could this cause my delays on my ILR application?

A: You just need to update your current passport details on your e-VISA. However, when you apply ILR, you will need to provide copies of both old and new passport details for the application.

ILR Application

Q: Are there any guidance on the requirements for settlement applications for BN(O) visa holders?

A: Refer to HK 55.1 to HK 64.2. of Immigration Rules Appendix Hong Kong British National (Overseas) (<https://www.gov.uk/guidance/immigration-rules/immigration-rules-appendix-hong-kong-british-national-overseas>)

Life in the UK Test

Q: Are individuals on the BN(O) visa route who have arrived before they were 18, and turn 18 within the 5-year qualifying period for ILR, required to take the Life in the UK test? If yes, is it possible for someone under 18 to take the Life in the UK test?? This may apply to those who are about to turn 18 just before they have to apply for citizenship but may be planning to take the test 1 or 2 months before (in line with their parents) .

A: It is based on the date of application whether you are under or above 18. Unless an exemption applies, the applicant must meet the Knowledge of Life in the UK requirement from 18-64. Refer to the Life in UK Test official website, you must be 16 years of age or older to be able to book the test.

No Recourse to Public Funds (NRPF)

Q: What support is available to individuals who have had their NRPF condition lifted, as a result of destitution, and may not be able to afford their ILR/citizenship applications??

A: The Home Office does not offer general fee exemptions or reductions for ILR applications on BN(O) visa route. Fee waiver application is possible for further or limited leave to remain. They must demonstrate that they are in receipt of public funds having previously successfully applied

for a change of conditions (CoC), and that they cannot afford the fee and/or the IHS for the visa extension.

Q: What are the implications on settlement for people applying to have their NRPF condition removed?

A: No implications. You are still eligible to apply for ILR/Settlement.

Proof of Residency Period

Q: How many documents should I provide to cover the full period?

A: At least a couple of different sources for one period. More than one sources for the period is advised.

Q: What documents should I provide if I do not have a job in the UK?

A: There is no fixed list of documents you are required to submit. Examples are utility payment bills, bank statements, tenancy agreement, GP record, etc

Referees

Q: What are the criteria to be a referee for identity check?

A: You are not required to provide referees for identity check for ILR application, but for Citizenship application. Referees must be 18 or above.

First referee:

For Child: Must be a recognised professional who engaged with the child, e.g. teacher, social worker

For Adult: Must be a recognised professional (any nationality), e.g. accountant, solicitor (who is not representing you with the application), nurse, doctor, civil servants, etc

Second referee:

For both adult and child Must be a British passport holder + a recognised professional or age 25 or above

Details of recognised professional: <https://www.gov.uk/government/publications/confirming-identity-countersignatory-and-digital-referees/confirming-id-referees>

Residency Period

Q: Any guidance on continuous residence?

A: For ILR application: <https://www.gov.uk/government/publications/continuous-residence/continuous-residence-guidance-accessible-version>

Q: Does the continuous guidance, specifically 'You must only include whole days when calculating an applicant's absences. Part day absences, less than 24 hours are not counted.' applies for HKBN(O)?

A: It applies to BN(O) visa route. Whole days mean 12:00 midday to 12:00 midnight. Part day absences mean less than 24 hours are not counted. For example, if the applicant was absent for 180 days during the 12-month period and started their journey back to the UK on day 180 but arrived on day 181, day 181 would not be a day of absence and the period would not exceed 180 days.

Q: On this page <https://www.gov.uk/apply-citizenship-indefinite-leave-to-remain> It states that 'you should not have spent more than 450 days outside the UK during the 5 years before your application' which is different from what was said on the guidance for HKBN(O) 'An applicant must not be absent (that is, outside the UK) for more than 180 days in any 12-month period...' people are wondering if they need to follow both rules.

A: The amount of time the applicants are allowed to be out of the UK is different for ILR and Citizenship applications. For Citizenship application, applicants must be in the UK at the beginning of the period of 5 years ending with the date of the application to prove your residences. Applicants must not absent from the UK for more than 450 days in the 5 year period, and not absent for more than 90 days in the last year before application. For ILR application, applicants must meet the continuous residence requirement as specified in Appendix Continuous Residence during the five qualifying years, that is applicants must not have been outside the UK for more than 180 days in any 12-month period to fulfil the 5 years continuous residency period. It can be calculated by counting back from whichever of the following dates is the most beneficial to the applicant: (a) the date of application; or (b) any date up to 28 days after the date of application; or (c) the date of decision.

Q: When does the date of an individual's continuous residence start?

A: For ILR application, the earliest date can be counted back from 1)the date of application; 2)the date of decision; 3)any date up to 28 days after the date of application, whichever is most beneficial to the applicant. As the time between the grant of entry clearance and the date you entered the UK counts towards the total of absence, if you entered the UK after 180 days from the date of your application or from the date of the decision, you are advised to count from the date of the arrival.

Q: The guidance says 'the time between the grant of entry clearance and the date of arrival is a period during which they had permission on that route and should be treated as a period of lawful residence. In these instances, you must establish the date the applicant entered the UK. The time between the grant of entry clearance and the date they entered the UK counts towards the total of absences.' Therefore, if we take a person from a question above, who can show that their arrival to the UK was delayed due to compelling and compassionate personal circumstances, could they still qualify for ILR?

A: The time between the grant of entry clearance and the date you entered the UK counts towards the total of absence. Applicants are not required to show the reason for delaying arrival to the UK. If applicants met the 5 continuous residency period, that is spend no more than 180 days outside the UK in any 12 months, they are still eligible for ILR application.

Q: How can applicants prove the date of entry to the UK for settlement applications if there is no stamp on the passport?

A: Applicants are advised to keep the record of your travelling history, e.g. boarding pass, flight tickets, etc as a proof of entrance to the UK, if there is any dispute on your continuous residency period for the application. Another option is to check with the flight provider for the travelling history. If applicants fail to keep their travelling history, they can make an online application to request copies of personal information held in the borders, immigration and citizenship system from the Home Office, known as a 'Subject Access Request' (SAR) or a 'Right of Access Request'. Applicants can use this service to request personal information held on the Home Office about your immigration history and the information of citizenship.

Q: Does LOTR count towards residency period?

A: LOTR does not count towards residency period.

Q: Which date should applicant count back on individual cases – under or above 180 days of absences?

A: As the time between the grant of entry clearance and the date you entered the UK counts towards the total of absence, if you entered the UK under 180 days, the earliest date can be counted back from 1)the date of application; 2)the date of decision; 3)any date up to 28 days after the date of application, whichever beneficial to you. However, if you entered the UK after 180 days, you are advised to count on the date of arrival.

Q: How does the Home Office identify the days of absences in the UK if applicants have two passports – HKSAR and BN(O) passports?

A: The Home Office has a system to record your immigration history. Applicants are advised to keep the record of your travelling history, e.g. boarding pass, flight tickets, etc, as a proof of your travelling or immigration history in and out the UK if any dispute on your continuous residency period for the application arises. If applicants fail to keep their travelling history, they can make an online application to request copies of personal information held in the borders, immigration and citizenship system from the Home Office, known as a 'Subject Access Request' (SAR) or a 'Right of Access Request'. Applicant can use this service to request personal information held on the Home Office about your immigration history and the information of citizenship.

Work Allowed

Q: Sportspersons condition - If someone unknowingly breaks that condition what are the consequences? Will it affect the ILR application?

A: Refer to para 9.8.3 of the Immigration Rules, an application for permission to stay may be refused where a person has previously failed to comply with the conditions of their permission, unless permission has been granted in the knowledge of the previous breach. The Home Office has discretion to refuse the ILR application for any breach of conditions. If someone unknowingly breaks it, an explanation of how it was done unknowingly and any mitigating circumstances should be included in the application.

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