

CHANGE TO THE CALCULATION OF CONTINUOUS ABSENCES FOR INDEFINITE LEAVE TO REMAIN

The Home Office recently introduced a significant retrospective change to the way continuous residence for Indefinite Leave to Remain (ILR) will be calculated.

The Home Office has changed how it will calculate absences to determine whether or not migrants in certain visa categories have been continuously resident in the UK over a 5 year period when applying for ILR. They will now consider absences of over 180 days in **any** consecutive 12 month period in the 5 years prior to applying for ILR as breaking the period of continuous residence, rather than the consecutive 12 month periods counting backwards from the date the application is submitted.

It was initially hoped that this change was the result of a drafting error. However, the Home Office has since confirmed that it will now be considering absences in this way when deciding whether or not they will approve an ILR application. That said, the Home Office has also confirmed that they *may* still grant ILR where the absences do not meet the new criteria, but the applicant has provided a letter setting out reasons why the change will cause them exceptionally harsh consequences, and where the periods of leave (visas) the applicant is relying on were granted prior to the rule change date of 11 January 2018.

Time will tell what the Home Office will consider as being 'harsh consequences', but a factor it has confirmed it will take into account is if the applicant will not be able to qualify for settlement at a later date due to not being able to apply for further extensions.

Continuing grounds for discretion include where excessive absences were for serious or compelling reasons such as serious illness, a conflict or a natural disaster (e.g. a volcanic eruption) as these circumstances are considered 'exceptional'.

Excessive absences for employment or economic activity reasons continue **not** to be considered exceptional. Neither will time spent overseas due to pregnancy, maternity, paternity or adoption-related leave.

Migrants with concerns about their ILR eligibility due to the rule change should review their absences so far and carefully consider any further UK absences between now and when they apply to eliminate any reason why their application would not be successful.

Key issues

- To qualify for ILR, no more than 180 days' absences are allowed in **any** consecutive 12 month period, with limited exceptions
- Applies to all Tier 2 (General) migrants that are applying for Indefinite Leave to Remain
- Also applies to PBS dependants who have 'leave' granted under the Immigration Rules from 11 January 2018

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