

Indefinite leave to remain in closed categories

February 2014 – Guidance Note

Partners: paragraph 319E of the Immigration Rules to be granted indefinite leave to remain as the partner of a PBS migrant, the applicant must:

- be the spouse, civil partner, unmarried or same sex partner of a person who is being, or has been, granted indefinite leave as a PBS migrant
- have, or have last been granted, leave as the partner of the person who is being, or has been, granted indefinite leave as a PBS migrant
- have been living with the PBS migrant in the UK in marriage or civil partnership, or in a relationship similar to marriage or civil partnership for at least:
 - ✓ 2 years - for applicants granted leave as the partner of a PBS migrant under the rules in place before 9 July 2012 and who have since had continuous leave in that category
 - ✓ 5 years – for applicants granted leave as the partner of a PBS migrant under the rules in place on or after 9 July 2012, who have since had continuous leave in that category and, during that period, have met all the requirements of paragraph 319C (a) to (e)
 - ✓ be in a subsisting relationship with the PBS migrant at the time the application is made (for more information, see related link: 2.0
 - ✓ Genuine and subsisting relationship)
 - intend to live together permanently with the PBS migrant as their spouse, civil partner, unmarried or same sex partner (for more information, see related link: 1.0 Partners)
 - meet the knowledge of language and life in the UK requirements - for more information,

The applicant must not:

- fall for refusal under general grounds
- be an illegal entrant

Applicants must not be in breach of immigration laws, unless:

- the application is made within 14 days of the applicant's leave expiring and the Secretary of State considers there is a good reason beyond the control of the applicant or their representative, provided in or with the application, why the application could not be made in time, the overstaying will be disregarded;
- the application is made following the refusal of a previous application for leave which was made in-time or to which the exception outlined here applied; and within 14 days of:
 - o the refusal of the previous application for leave
 - o the expiry of any leave which has been extended by section 3C of the Immigration Act 1971
 - o the expiry of the time limit for making an in-time application for administrative review or appeal (where applicable)
 - o any



administrative review or appeal being concluded, withdrawn or abandoned or lapsing. The threshold for what constitutes 'good reason' is high and will depend on the individual circumstances of the case, but, for example, may include delays resulting from unexpected or unforeseeable circumstances such as the following:

- serious illness which meant that the applicant or their representative were unable to submit the application in time (where supported by appropriate medical documentation)
- travel or postal delays which meant that the applicant or their representative were unable to submit the application in time
- inability to provide necessary documents: this would only apply to exceptional or unavoidable circumstances beyond your control, such as the Home Office being at fault in the loss of, or delay in returning, travel documents, or delay in obtaining replacement documents following loss as a result of theft, fire or flood (where supported by evidence of the date of loss and the date replacement documents were sought).

Change to the Immigration Rules:

From 9 July 2012, dependent partners of PBS migrants must complete a 5 year probationary period before they qualify for ILR.

If the PBS migrant obtains ILR or British citizenship before their partner has completed their 5 year probationary period, the partner can still apply for further leave to remain as a PBS dependant rather than as the partner of a settled person.

If their application meets the requirements, leave to remain can be granted for up to 3 years. If the PBS migrant has ILR on the basis of long residence, their partner cannot extend their leave or gain settlement as a PBS dependant and must switch into the partner of a settled person category and apply for limited leave.

Combining leave for ILR If the applicant has previously been granted leave in another category of the Immigration Rules as the spouse, civil partner, unmarried or same-sex partner of the same main applicant (that is, the PBS migrant), that leave can be combined with leave granted as a PBS dependant to count towards the probationary period for ILR, provided their most recent leave has been as the partner of that PBS migrant. Leave granted for any other reason cannot be combined.

Applications from PBS dependants submitted on or after 9 July 2012, where the PBS migrant was granted ILR in that category, must be considered under paragraphs 319AA- 319J in part 8 of the Immigration Rules.

It is an immigration category that was removed or subsumed by the introduction of the points-based system (PBS) in 2008 and 2009.

Migrants cannot now apply for entry clearance, leave to enter or limited leave to remain in these categories.

These categories are no longer available for entry to the UK but applicants with current leave can apply for ILR. For details of the closed immigration categories that do not lead to ILR, or

settlement, see link on left: Closed categories: no indefinite leave to remain. This guidance includes rules relating to migrants who entered or remained in the UK under closed employment categories, closed self-employment categories and concessions outside the rules.

A retired person of independent means is not included in this section because the category has not been completely closed. Applicants can no longer apply to enter the UK in this category.

But those people already here as a retired person of independent means can still apply for leave to remain or ILR.

Date of the change	Details of the change
26 February 2014	Six month review by the modernised guidance team: <ul style="list-style-type: none"> • Minor housekeeping and plain English changes throughout.
28 October 2013	Change request: <ul style="list-style-type: none"> • Throughout the guidance: 0 references to paragraph 33BA of the Immigration Rules replaced with paragraphs 2.2 and 2.3 of Appendix KoLL of the Immigration Rules 0 in all refusal wording tables, replaced 'Does not meet English language and Knowledge of life requirements' with 'Does not meet the Knowledge of Language and Life in the UK requirement'.

The categories below were closed when the points-based system (PBS) was introduced (or have closed since) and the table below gives the nearest comparable route under PBS.

Previous category	PBS Category
Fresh talent: working in Scotland	Tier 1 (Graduate entrepreneur)
International graduate scheme	Tier 1 (Graduate entrepreneur)
Tier 1 (Post-study work)	Tier 1 (Graduate entrepreneur)
Carers (other than work permit holders)	Tier 2 (General) or visitors category
Jewish Agency	Tier 2 (General)
General Agreement in Trade-in-Services (GATS)	Tier 5 (Temporary worker - international agreement)
Au pairs	Tier 5 (Youth mobility scheme) - restricted age and nationalities
Gap year entrants	Tier 5 (Youth mobility scheme) - restricted age and nationalities
Working holiday maker	Tier 5 (Youth mobility scheme) - restricted age and nationality
China graduate work experience	Tier 5 (Temporary worker - government authorised exchange)
International Association for the	Tier 5 (Temporary worker - government

Exchange of Students of Technical Experience (IAESTE) Teachers	authorised exchange)
Teachers and language assistants	Tier 5 (Temporary worker - government authorised exchange)
Work permit holder – Training and Work Experience Scheme, Medical Training Initiative	Tier 5 (Temporary worker) - Government authorised exchange and sponsored by a UK government department
Voluntary workers	Tier 5 (Temporary worker - charity worker)
Japan youth exchange	Tier 5 (Youth mobility scheme) or Tier 5 (Temporary worker)
Research assistants to MPs	Any part of the points-based system that they meet the requirements of
British Universities North America Club (BUNAC) students	Tier 5 (Temporary worker - government authorised exchange)
International Fire Fighters Fellowship programme	Tier 5 (Temporary worker - government authorised exchange)
Department of Trade and Industry (DTI) International secondment scheme	Tier 5 (Temporary worker - government authorised exchange)
EU Leonardo da Vinci programme	Tier 5 (Temporary worker - government authorised exchange)
Film crew on location	Business visitor
Overseas qualified nurses, midwives and student nurses not on work permits	Overseas qualified nurses and midwives - Tier 2 (General) Student nurses – Tier 4 (General)
Religious non pastoral visiting worker	Tier 5 (Temporary worker – religious worker)