

## **HSMP INDEFINITE LEAVE TO REMAIN (ILR) JUDICIAL REVIEW: POLICY DOCUMENT**

### **Introduction**

1. Prior to 3 April 2006 the continuous residence requirement for ILR under the Highly Skilled Migrant Programme (HSMP) was that migrants should show that they had spent four years continuous residence in the United Kingdom. The four year qualifying period was increased to five years on 3 April 2006.
2. The HSMP Forum Ltd brought a Judicial Review on the grounds that those who entered onto the HSMP before the qualifying period for Indefinite Leave to Remain (ILR) was increased from four to five years should be eligible to apply for settlement (ILR) after four years on the scheme. The judge found in favour of the HSMP Forum on this point. A copy of the judgment can be found at the following web address: <http://www.bailii.org/ew/cases/EWHC/Admin/2009/711.html>
3. The purpose of this policy is to give effect to the High Court's judgment and enable affected migrants to apply after four years continuous residence in the United Kingdom in a qualifying category. Under this policy, migrant's will not have to demonstrate a knowledge of language and life in the United Kingdom in order to obtain ILR.
4. The High Court's decision also covered migrant's who entered the scheme after the Rules change of 3 April 2006 but before the scheme was suspended on 7 November 2006. As such the policy also provides for those who entered the scheme prior to 7 November 2006 to be considered under the ILR rules that were in place at that time. Whilst this group will therefore have to complete five years continuous residence before being eligible for ILR they will not be subject to a knowledge of language and life in the United Kingdom test.

### **Who does this document apply to?**

5. Paragraphs 7- 26 of this policy document cover migrants who:
  - a. Received an HSMP approval letter issued on the basis of an application made before 3 April 2006; and
  - b. Were granted Entry Clearance or Leave to Remain (LtR) on the basis of that letter; and
  - c. Fall into one of the following five categories:
    - i. Have already settled in the United Kingdom under HSMP or Tier 1 (General) on the basis of having completed five years continuous residence in a qualifying category
    - ii. Have completed four years continuous residence in the United Kingdom in a qualifying category

- iii. Are coming up to having completed four years continuous residence in the United Kingdom in a qualifying category
- iv. Those who applied for ILR after four years, were refused, and either:
  - won an appeal against the refusal decision and were then granted permission to stay.
  - did not appeal the refusal decision or their appeal was dismissed
- v. Those who have completed four years continuous residence in the United Kingdom in a qualifying category and have submitted an application for Further Leave to Remain (FLR)

6. Paragraph 27 of this policy document covers migrants who:

- a. Received an HSMP approval letter issued on the basis of an application made between 3 April 2006 and 7 November 2006; and
- b. Were granted Entry Clearance or Leave to Remain (LtR) on the basis of that letter.

**Requirements for ILR under the terms of this policy document for those groups covered by paragraph 5 of this document.**

7. The requirements for ILR for a person qualifying for consideration under this policy document are:
- a. The migrant has spent a continuous period of four years lawfully in the United Kingdom, of which the most recent period must have been spent with leave as a highly skilled migrant, and the remainder must be made up of leave as a highly skilled migrant, leave as a work permit holder (under paragraphs 128 to 133 of the Immigration Rules), leave as an Innovator (under paragraphs 210A to 210F of the Immigration Rules) or leave as a Tier 1 (General) migrant
  - b. The migrant applied to enter onto the HSMP before the qualifying period for Indefinite Leave to Remain (ILR) was increased from four to five years on 03 April 2006, and was successful in that application
  - c. Throughout the four years spent in the United Kingdom the migrant has been able to maintain and accommodate himself and any dependants adequately without recourse to public funds
  - d. The migrant is lawfully economically active in the United Kingdom in employment, self-employment or a combination of both

**Those who have already settled in the United Kingdom under HSMP or Tier 1 (General) on the basis of having spent completed five years continuous residence in the UK in a qualifying category**

8. These migrants gained an initial grant of one year's leave under the HSMP requirements, then extended their initial year grant by a further three years, and were subsequently required to make a second extension application in order to have completed five years continuous residence in the UK.
9. Migrants described in the paragraph above will be allowed to apply for a one-off payment to cover the cost of the second extension application which would not otherwise have been required.
10. Migrants will also be considered to have obtained ILR from when they had first completed four years qualifying residence for the purposes of any subsequent citizenship application.
11. These migrants must apply for the payment described in paragraph 7 before 20 May 2010.

**Those who have completed four years continuous residence in the United Kingdom in a qualifying category**

12. These migrants gained an initial grant of one year's leave under the HSMP requirements, then extended their initial year grant by a further three years, and were subsequently required to make a second extension application in order for them to complete the fifth years' continuous residence in the United Kingdom.
13. Migrants will be allowed to apply for ILR after they have completed four years qualifying residence.
14. The requirements for ILR will be those described in paragraph 5 of this policy document.
15. Migrants described in the paragraph above will be allowed to apply for a one-off payment to cover the cost of the second extension application which would not have otherwise been required.
16. Migrants who make a successful ILR application will also be considered to have first obtained ILR from when they had completed four years qualifying residence for the purposes of any subsequent citizenship application.

**Those who are coming up to having completed four years continuous residence in the United Kingdom in a qualifying category**

17. These migrants gained an initial grant of one year's leave under the HSMP requirements, or a grant of two years where their application was

made before 3 April 2006 but not approved until after this date, and then extended their initial year grant by either three or four years.

18. The migrants described in the paragraph above will be allowed to apply for ILR after they have completed four years qualifying residence.
19. The requirements for ILR will be those described in paragraph 5 of this policy document.

**Those who applied for settlement after four years, were refused, and either:**

- **won an appeal against the refusal decision and were then granted permission to stay;**
- **did not appeal the refusal decision or their appeal was dismissed**

20. These migrants will be entitled to apply for their original ILR application to be reviewed.
21. We will review the ILR application under the requirements described in paragraph 5 of this policy document.
22. If the migrant is successful, their leave will be varied to ILR under HSMP.
23. Migrants who are successful in their ILR application will also be considered to have first obtained ILR from when they had completed four years qualifying residence for the purposes of any subsequent citizenship application.

**Those who have completed four years continuous residence in the United Kingdom in a qualifying category and have submitted an application for FLR**

24. These migrants gained an initial grant of one year's leave under the HSMP requirements, then extended their initial year grant by a further three years, and have now made a second extension application in order to complete five years continuous residence in the United Kingdom.
25. The migrants described in the paragraph above will be invited to vary their application to an ILR application under the terms of this policy document.
26. The requirements for ILR will be those described in paragraph 5 of this policy document.

**Requirements for ILR under the terms of this policy document for those groups covered by paragraph 6 of this document.**

27. The requirements for ILR for a person qualifying for consideration under this policy document are:

- a. The migrant has spent a continuous period of five years lawfully in the United Kingdom, of which the most recent period must have been spent with leave as a highly skilled migrant, and the remainder must be made up of leave as a highly skilled migrant, leave as a work permit holder (under paragraphs 128 to 133 of the Immigration Rules), leave as an Innovator (under paragraphs 210A to 210F of the Immigration Rules) or leave as a Tier 1 (General) migrant.
- b. The migrant applied to enter onto the HSMP between 03 April 2006, and 7 November 2006 and was successful in that application
- c. Throughout the five years spent in the United Kingdom the migrant has been able to maintain and accommodate himself and any dependants adequately without recourse to public funds
- d. The migrant is lawfully economically active in the United Kingdom in employment, self-employment or a combination of both

### **General Grounds for Refusal**

28. Where the migrant falls for refusal under the General Grounds for Refusal in paragraphs 320-322 of the Immigration Rules, we will refuse their application even if it otherwise qualifies under the terms of this policy. This might happen, for example, if they have broken United Kingdom immigration law or have a criminal conviction.

### **Dependants**

29. The immigration status of dependants of migrants in the categories covered by this policy will follow that of the principal applicant.