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IMMIGRATION DIRECTORATES' INSTRUCTIONS

CHAPTER 3 SECTION 1

LEAVE TO ENTER STUDENTS (GENERAL)

1. INTRODUCTION

In view of the large number of overseas students seeking leave to enter or to remain in the United Kingdom each year, it is important that both Immigration Officers and Managed Migration caseworkers quickly identify and deal with genuine straightforward applications, where further enquiries are unnecessary, in order to concentrate resources on those cases which warrant further investigation.

2. ENTRY CLEARANCE

From 1st September 2007 changes to the Immigration Rules relating to students mean that it is a mandatory requirement that all persons seeking entry to the United Kingdom for the purpose of study require prior entry clearance as a student before arriving in the United Kingdom.

The only exceptions are those:

(a) who may qualify in the new category of **Student Visitors** (see Chapter 2 Section 4 of these instructions); and

(b) British nationals who are:

- British Nationals (Overseas)
- British overseas territories citizens
- British Overseas citizens
- British protected persons
- British subjects under the British Nationality Act 1981.

These British nationals without the right of abode in the United Kingdom are not affected by the new mandatory requirement to hold a student entry clearance and will continue to be able to travel to the United Kingdom without a student entry clearance. However, irrespective of the period of time applied for and subject to meeting the requirements of the student rules, leave to enter can only be granted up to a maximum of six months.

A passenger who seeks leave to enter without the required entry clearance as a student and who is not a British national as described in paragraph 2(b) above or who does not meet the requirements in paragraph 56K as a **Student Visitor**, should be refused in accordance with paragraph 6 (below) of these instructions.

3. GRANTING LEAVE TO ENTER

The requirements to be met by persons seeking leave to enter the United Kingdom as a student are set out at paragraph 57 of HC 395 (as amended) (see **Chapter 3 Section 3 paragraph 10** of these instructions) and **must** be referred to when reading the following guidance.

3.1 Checklist for an Immigration Officer

All persons who seek to enter the United Kingdom as a student should be refused leave to enter if they do not hold a valid student entry clearance. British nationals without the right of abode in the United Kingdom (as listed in paragraph 2b above) may be granted leave to enter up to a maximum of six months at the port of entry by an Immigration Officer, subject to the requirements of paragraph 57 of the rules being met and provided none of the general grounds for refusal set out in Part 9 of HC 395 apply.

Before reaching a final decision on whether a British national without the right of abode in the United Kingdom (as listed in paragraph 2b above) qualifies for entry as a student, an Immigration Officer needs to be satisfied that:

- He has been accepted on a course of study which is to be provided by an organisation which is included on the Register of Education and Training Providers (formerly known as the Department for Education and Skills' Register of Education and Training Providers) and is able and intends to follow:
 - A recognised full-time degree at a publicly funded institution of further or higher education which maintains satisfactory records of enrolment and attendance of students and supplies these to the Border and Immigration Agency when requested; or
 - A weekday full-time course involving attendance at a single, bona fide private education institution (which maintains satisfactory records of enrolment and attendance of students and supplies these to the Border and Immigration Agency when requested) for a minimum of 15 hours daytime study per week of a single subject or directly related subjects; or
 - A full-time course at an independent fee paying school (which maintains satisfactory records of enrolment and attendance of students and supplies these to the Border and Immigration Agency when requested), outside the maintained sector, and which meets the requirements of the Education Act 1944; and
 - If he has been accepted to study externally for a degree at a private education institution, he must also be registered as an external student with the UK degree awarding body;
- From 30 November 2007 he holds an Academic Technology Approval Scheme (ATAS) clearance certificate from the Counter-Proliferation Department of the Foreign and Commonwealth Office if he intends to undertake postgraduate studies leading to:-
 - a Doctorate or Masters degree by research in a designated subject listed in paragraph 1 of Appendix 6 to the Rules, or
 - a taught Masters degree in a designated subject listed in paragraph 2 of Appendix 6 to the Rules;

(See **Chapter 3 Section 3 paragraph 13.6** of these instructions for full details of ATAS, including how to verify an ATAS clearance certificate)

- From 30 November 2007 if he is an undergraduate or postgraduate student who is coming to a publicly funded institution of higher education in the UK to undertake a period of study and/or research which forms part of an overseas degree course, he is able to provide the following documentary evidence:-
 - A letter from the overseas university confirming that the student is enrolled on a degree course overseas and the period of study and/or research in the UK will count towards his overseas degree qualification; and
 - A letter from the named UK university confirming that the overseas student has been granted permission to attend their institution as a visiting undergraduate or postgraduate student to undertake a period of study and/or to utilise their research facilities for the purpose of completing an overseas degree course.

Immigration Officers should note that the ATAS requirement also applies to visiting postgraduate students who are enrolled on a course of study at an overseas institution if they intend to undertake a period of study and/or research for more than six months at a UK publicly funded institution of higher education, the area of study and/or research includes a designated subject listed in paragraph 1 or paragraph 2 of Appendix 6 to the Rules, and the period of study/research forms part of the student's overseas postgraduate course;

- He is able to meet the costs of his course and accommodation together with the maintenance of himself and his dependants without taking employment or engaging in business or having recourse to public funds;
- He intends to leave the United Kingdom on completion of his studies (for further details of intention to leave see **Chapter 3 Section 3 paragraph 20.2** of these instructions for degree students who are eligible to switch into work permit status under the rules);
- The passport and documents including study documents are genuine;
- If he is seeking leave to enter to undertake a short course, he has not previously been in the United Kingdom on a different short course, see **Chapter 3 Section 3 paragraph 19** of these instructions on perpetual students; and
- He has basic knowledge of the subject he is studying, including English Language, which would enable him to follow the course.

It should be noted that following changes to the Immigration Rules on 1st September 2007, visitors are no longer permitted to undertake a course of study in the United Kingdom.

4. POLICE REGISTRATION

Where appropriate the requirement to register with the police will apply (see **Chapter 10** of these instructions).

5. CODES FOR IMMIGRATION SERVICE – CASE INFORMATION DATABASE (IS-CID)

STS Students given leave to enter for less than twelve months

STL Students given leave to enter for 12 months or more

6. REFUSAL OF LEAVE TO ENTER

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- Where no entry clearance is held and the requirements of paragraph 57 are not met, the passenger should be refused leave to enter under paragraph 59.
- A visa national seeking entry without a valid United Kingdom visa falls to be refused under paragraph 24 (see **Chapter 9 Section 2** of these instructions).
- Where a passenger seeking entry in this capacity holds an entry clearance for this purpose, refusal may only be considered under paragraph 321A (see **Chapter 9 Section 3** of these instructions). It should be noted, however, that if the student application is made **after** the entry clearance has been set aside, it **may** be refused under paragraph 59.
- In the case of a person returning to the United Kingdom from a temporary absence abroad, within a period for which he was previously given leave, reference **must** be made, before refusal, to **Chapter 1 Section 9 "Persons returning to resume previous leave"** of these instructions.

6.1 On entry refusal codes

A4 - Unsatisfactory or unacceptable arrangements for proposed study

A5 - Intention to study not genuine and realistic

E4 – Lack of required non settlement entry clearance

6.2 Right of Appeal and corresponding refusal forms

Details of Appeal rights and the corresponding refusal form can be found in **Chapters 12 and 9** respectively of these instructions.