

# Entering the UK

Most visas (entry clearance) for the UK require an application before you travel to the UK. Some of the most common forms of visa are student visa, work visas and partner/spouse visas.

You can find information about visas for the UK on the Home Office website:  
[www.gov.uk/browse/visas-immigration](http://www.gov.uk/browse/visas-immigration)

The requirements for these visas are becoming increasingly difficult to meet: most require a lot of documentary evidence, large amounts of money, and lengthy probation periods. See also the Toolkit *Family Migration* section.

You should always try and get legal advice before submitting an application.

Under the immigration rules, there are "general grounds" under which an application to enter the UK can be refused. This includes if you are subject to a deportation order, or are subject to a re-entry ban for other reasons. See Toolkit section on 'Re-entry bans'.

Some of the grounds for refusal are quite vague (for example "failure by a person arriving in the United Kingdom to furnish the Immigration Officer with such information as may be required for the purpose of deciding whether he requires leave to enter and, if so, whether and on what terms leave should be given"); others are more specific. For example, on unpaid NHS debts: an application may be refused if the applicant has failed to "pay a charge or charges with a total value of at least £500 in accordance with the relevant NHS regulations on charges to overseas visitors." You can find the immigration rules on general grounds of refusal here: <https://www.gov.uk/guidance/immigration-rules/immigration-rules-part-9-grounds-for-refusal>

The right to appeal refusals of visa applications is limited - there is now only the right of appeal for decisions regarding international protection (usually, refugee status or humanitarian protection), human rights applications or EU law applications.

Even if your application is successful, entry clearance officers (the immigration officers who work at ports of entry) can still refuse to let you enter. For example, you may have successfully applied for a visa ("entry clearance") but an Immigration Officer may refuse to let you enter the UK if they are "satisfied" that false representations were made in your application, or false documents or information were submitted, or you did not disclose important information, or if your circumstances have changed since you applied. See Immigration Rules, section *Refusal of leave to enter in relation to a person in possession of an entry clearance*.

All visas will be time-limited and so will need to be renewed if you wish to stay longer. It is possible to move between some immigration categories while in the UK, for example between tiers of the points-based system. If you do not renew your visa, you will be classified as an **overstayer**. Overstaying is an immigration offence, and the Home Office frequently use “poor immigration history” as one reason to refuse release from detention and applications for leave to remain.

This Toolkit will not go into detail about the many different kinds of immigration applications that can be made. See next pages for information on human rights applications, family migration and asylum claims.

## **Student visas**

People who are not European Economic Area (EEA) nationals and are wishing to study in the UK for more than six months, will need to apply for a Tier 4 student visa. You will need to have been offered a place on a course; be able to speak, read, write and understand English; and have enough money to support yourself and pay for your course. You may be able to work during your time as a student in the UK, but generally this is restricted to 20 hours per week during term-time. Read more about the Tier 4 student visa here:

<https://www.gov.uk/tier-4-general-visa>

## **Work visas**

The student visas mentioned above, and visas for people who are not EEA nationals wishing to work in the UK, come under the points-based system. There are five 'tiers' to this system. Tier 1 is for “high-value migrants” including entrepreneurs, investors, and those very few people who come under the “exceptional talent” visa. Tier 2 is a category for “skilled workers” with a job offer in the UK. Tier 3 is in theory for low-skilled workers filling specific temporary labour shortages but has never been used. Tier 4 is for students (see above), and Tier 5 is for certain categories of temporary workers.

## **European nationals**

Nationals from the European Economic Area (EEA) can travel to the UK more easily than people from non-European countries. The EEA consists of the member states of the EU, plus Iceland, Liechtenstein and Norway. As an EEA national (or if you are Swiss), you can enter the UK with either a valid passport or a national identity card issued by a EEA country. It must be valid for the whole of your stay. As an EEA/Swiss national, you do not need a visa to enter the UK.

See the Toolkit *EU* page for information on the right to remain in the UK as an EU national.

## Health surcharge

The government has introduced an “immigration health surcharge” (IHS) as part of some applications for leave to enter/remain in the UK.

All applicants for entry clearance (visas) for **more than six months**, and people already in the UK applying for time-limited leave to remain, are required to pay the charge to cover National Health Service (NHS) healthcare in the UK.

This includes people applying to come to the UK as a worker or student under the points-based system, people applying for leave to remain under *Article 8 family/private life*, and people applying for leave to remain under the five and ten-year *family migration routes or long residence rule*.

You do not need to pay the surcharge if you’re applying from outside the UK for a visitor visa or any visa that lasts 6 months or less. The rules state that you do not need to pay the surcharge if you are applying for indefinite leave to remain (ILR), but there have been occasions when the Home Office have stated it is required and will be refunded if the application is successful. If you apply for *indefinite* leave to remain and are instead granted a form of *limited* leave to remain by the Home Office, you are likely to be asked to pay the surcharge.

You currently do not need to pay the surcharge if you are an EEA national (or family member) exercising treaty rights. You do not need to pay the surcharge if you are a national of Australia or New Zealand; a child under 18 who is in local authority care; or an identified victim of trafficking. You do not need to pay the surcharge if you are an asylum seeker or applying for humanitarian protection, or other protection under Article 3 of the European Convention on Human Rights (ECHR).

Find a full list of exemptions to the surcharge here: [www.freemovement.org.uk/nhs-surcharge-for-immigration-applications](http://www.freemovement.org.uk/nhs-surcharge-for-immigration-applications)

The charge is £150 per year for students and £200 per year for all other types of application. You have pay the total amount for the length of visa you are applying for, upfront. For example, if you are applying for a visa that is valid for two years, you would need to pay £400 with your application. The charge is payable for each dependent as well as the main applicant. You pay the surcharge via the government's surcharge website.

If you can prove you are destitute, you can apply for a fee waiver on the basis that not getting a fee waiver would mean you couldn't exercise your human rights under the ECHR.

If you are required to pay the surcharge as part of your application, and your application is then refused, the health surcharge is refunded.

## Entering UK and claiming asylum

Some people claim asylum immediately on arrival at the airport/port of entry in the UK. If you do this, you will have your *screening interview* at the airport/port.

The Home Office believes that everyone should claim asylum at the port of entry, and that if you do not, this means you are less likely to be telling the truth. They refer to clear instructions to claim asylum at the airport. These instructions are a few small posters in English and do not take into account that many people do not have good English, and may not know what the word “asylum” means (they know they need safety or protection but may never have heard it called “asylum” before). They also do not take into account that many people seeking asylum have to use a smuggler/agent to enter the UK, who gives them strict instructions not to say anything about asylum until they are through immigration control (and the agent has safely got away).

### False passports

Some people who come to the UK to seek asylum use their own passports, but for many this is not possible. It would either put them at risk to apply for a passport in their country (imagine asking the Eritrean government for a passport and explaining you want it for a trip to the UK), or the use of a passport in their own name would make their presence known to the very authorities they are fleeing.

**Article 31 of the Refugee Convention** acknowledges the danger for some people of using a real passport in their own name, and states that asylum seekers should not be punished for this if they have a good reason for using false documents.

The “Article 31” principle is part of UK law as Section 31 of the 1999 Immigration and Asylum Act.

Section 31 provides that it is a defence for someone charged with “*document offences*”, if they can demonstrate that they have:

- come to the UK directly from a country where their life or freedom was threatened
- presented themselves to the authorities in the UK without delay
- showed good cause for their illegal entry or presence, and
- made a claim for asylum as soon as was reasonably practicable after their arrival in the UK.

Many asylum seekers are prosecuted by the UK government for the use of a false passport and are not made aware of the statutory defence above. If they are represented by lawyers who specialise in criminal law, and who do not know this Section 31 defence, the lawyer may wrongly advise their clients to plead guilty: the evidence of the crime is clearly there, and pleading guilty should lead to a shorter sentence. Asylum seekers should, however, be given advice about the Section 31 defence (which allows you to plead

not guilty).

If convicted, the personal may well serve a prison sentence and the criminal conviction for using a false passport may be used as a reason to refuse some applications for status – including indefinite leave to remain – and can cause problems when applying for work.

If you are in Scotland, you should ask your lawyer to look at the Crown Office's prosecution guidelines, designed to protect refugees fleeing persecution (find the link to the guidelines on the Toolkit *Entering the UK* page).

**There are legal options, even after a criminal sentence has been given, that may help you if you have been prosecuted for use of a false passport. One of these is the Criminal Cases Review Commission (CCRC).**

The CCRC was set up to deal with suspected miscarriages of justice. It has reviewed a number of convictions relating to offences by asylum seekers/refugees connected to their entry to the UK. In most of these cases, the applicants have been advised to plead guilty, and were not advised that they may have a defence. The CCRC has the power to refer convictions (and sentences) to the appropriate appeal court if it determines there is a real possibility that the conviction will be quashed.

For more information on this process, contact the CCRC on 0121 233 1473 or get an application form on their website:

[www.ccrcc.gov.uk/making-application/how-to-apply](http://www.ccrcc.gov.uk/making-application/how-to-apply)

The CCRC can deal with cases in England, Wales and Northern Ireland. For cases in Scotland, contact the Scottish CCRC on 0141 2707030 or see their website for more information: [www.sccrc.org.uk](http://www.sccrc.org.uk)

***Next section: Human Rights***