

## **Chapter 12 Annex B**

### **Criteria for determining section 4(5) applications**

#### **1. Introduction**

1.1 The intention of s.4(5) of the British Nationality Act 1981 is to recognise the position of those who serve the Crown in the British overseas territories in a particularly deserving way.

1.2 The discretion in s.4(5) is to be used:

- to enable those who have come to live in the United Kingdom to be registered as British citizens before completing 5 years residence
- in cases where such particularly deserving service has been rendered to the Crown under the Government of a British overseas territory that it would be appropriate to grant British citizenship without insisting on previous residence in the United Kingdom

1.3 The discretion in s.4(5) is to be used sparingly and not as a regular emolument of Crown servants in the British overseas territories for periods of satisfactory service. This puts registration under this provision on a similar basis to the granting of naturalisation under s.6(1) on grounds of Crown service (see Chapter 18).

1.4 Each application must be considered on its merits in accordance with all the criteria set out in paragraph 2 below. Quality of service is the most important criterion. If this is not met, it is unlikely that registration will be appropriate even if the other criteria are met.

#### **2. Criteria to be applied**

##### **2.1 Quality of service**

2.1.1 The main criterion is that the applicant should have played such a crucial part in the government of a British overseas territory that the service could be recognised as benefiting the United Kingdom itself.

##### **2.1.2 Service of significant benefit to a British overseas territory**

Service could be in any of the following:

- executive and legislative bodies
- statutory bodies
- education boards
- trade advisory boards
- military bodies

2.1.3 The list in 2.1.2 above is not exhaustive. It will be for an applicant to show that he or she was in a service which meets the statutory requirements as set out in 12.1.11 and that the service can be seen as benefiting the United Kingdom (in whatever way).

## **2.2 Connections with the United Kingdom**

2.2.1 In addition to meeting the quality of service criterion in 2.1 above, the applicant should also be able to show close ties with the United Kingdom. These might include, in order of importance:

- United Kingdom born ancestors
- close relatives who are British citizens
- previous service, such as in HM Forces during any war or conflict or while on active service (e.g. in Northern Ireland)
- payment of United Kingdom income tax
- investment in the United Kingdom
- education in the United Kingdom
- education of children in the United Kingdom
- close relatives living here

## **2.3 Rank**

2.3.1 The more senior the position reached by the applicant the more likely it is the criteria in 2.1 above will be met. An applicant in a junior position may nevertheless be registered if particularly deserving service beyond the call of duty has been performed.

## **2.4 Loyalty**

2.4.1 An applicant whose loyalty to the Crown is in question should normally be refused registration on these grounds alone.

2.4.2 Unquestioned loyalty should, however, not be as highly regarded as loyalty that has been tested and demonstrated. Examples are:

- service in a difficult post which has made the applicant unpopular in the society in which he moves
- the award of decorations for merit etc

## **2.5 Length of service**

2.5.1 Long service is not, in itself, a pre requisite for registration. The important factor is the quality of the service. We would, nevertheless, normally expect an applicant to have completed at least 10 years service.

## **3. Ex-servicemen in Hong Kong**

3.1 We have in the past registered, under s.4(5) of the 1981 Act, any British ex-servicemen who served in the defence of Hong Kong during the Second World War. In order to be eligible for registration under this paragraph (which was an alternative to meeting the criteria set out in paragraph 2 above), applicants had to:

- a. be resident in Hong Kong; and
- b. have served under the Government of Hong Kong in local units, such as the Hong Kong Volunteer Defence Corps

3.2 Service in units of the British Army, Royal Air Force or Royal Navy did not count for this purpose. However, applications can no longer be accepted from Hong Kong ex-servicemen (see 12.2.2 above).