

## **Illegal Entry**

### **1. General**

1.1 Section 33(1) of the Immigration Act 1971, as amended, defines an illegal entrant as "a person

(a) unlawfully entering or seeking to enter in breach of a deportation order or of the immigration laws, or

(b) entering or seeking to enter by means which include deception by another person".

1.2 The term "includes also a person who has entered as mentioned in paragraph (a) or (b) above".

1.3 A person found to be an illegal entrant who has not been given leave to enter or remain (see paragraph 6.1 below) is liable to be detained by an immigration officer and summarily removed from the United Kingdom.

1.4 The courts have ruled that these provisions are retrospective and thus any person who entered unlawfully before 1 January 1973 remains liable to be treated as an illegal entrant (Azam-v-SSHD [1973] 2 All ER 765).

### **2. Legal interpretation**

2.1 The judgement of the Appellate Committee of the House of Lords in Khawaja-v-SSHD [1983] 1 All ER 765 provides the basis for our present understanding of what constitutes illegal entry. In particular, the judgement:

- determined the evidential standard of proof which must be met by the Secretary of State to show illegal entry (i.e. proof on a high balance of probabilities)
- linked entry in breach of the immigration laws with the commission of an offence under Part III of the 1971 Act

2.2 Certain modifications to the definition in s.33(1) have since been made by the Asylum and Immigration Act 1996.

### **3. Categories of illegal entrants**

3.1 A person is an illegal entrant if he or she:

- entered unlawfully without leave - it is sufficient to show that the person was in breach of s.3(1)(a), not that they knowingly entered in breach of s.24(1)(a); or
- entered unlawfully in breach of a deportation order; or
- obtained leave by deception (including silent, innocent and third party deception) provided that the deception was:

- i. material (i.e. sufficient to influence an immigration officer to grant leave which the officer would otherwise have been bound to refuse had the true facts been known); and
  - ii. sufficient to amount to an offence under s.24(1)(a); or
- obtained, or sought to obtain, leave to enter by means which included deception under s.24(1)(aa) of the 1971 Act, as amended by the 1996 Act. (Where deceptive illegal entrants have subsequently been granted leave to remain on or after 1 October 1996, but this leave to remain was obtained by the same deception used to obtain entry, it is still possible to treat them as illegal entrants.)

#### **4. Examples of illegal entry**

4.1 Illegal entry may be encountered when the person concerned is attempting to gain, or has gained either:

##### **Entry without leave**

- Clandestinely
- Absconding from temporary admission
- Posing as:
  - i. a person with the right of abode, or
  - ii. a person exempt from control under s.8(3) of the 1971 Act
- Entry via Ireland or the Common Travel Area in circumstances not permitted by the 1971 Act or the Immigration (Control of Entry through Republic of Ireland) Order 1972, as amended; or

##### **Entry by deception**

- By deceiving the immigration officer on arrival as to his or her true intentions (e.g. posing as a visitor when the intention was to work, study or settle here)
- By posing as, or impersonating, a dependant of a person settled here
- By producing falsified documents, including false passports

#### **5. Amnesty for illegal entrants**

5.1 On 11 April 1974, the Home Secretary announced an amnesty for Commonwealth citizens and citizens of Pakistan who entered the country illegally on or after 9 March 1968 and before 1 January 1973. The amnesty applied also to people who were refused entry by an immigration officer and then entered the country illegally before 9 March 1968. Both classes of people could apply to have their position regularised and, if evidence of their entry and subsequent residence was satisfactory, their passports were endorsed by an immigration officer to give indefinite leave to remain.

5.2 The Home Secretary further announced on 29 November 1977 (Hansard 29.11.77, Written Answers cols 125-128) that Commonwealth citizens or citizens of Pakistan whose last entry had been secured by deception before 1 January 1973 could apply to have their stay regularised, and they were dealt with similarly.

5.3 The following categories of people did not benefit from either of these announcements:

- Seamen deserters and stowaways
- Those who entered the UK while the subject of a deportation order
- Foreign nationals (other than citizens of Pakistan)
- Overstayers (see OVERSTAYERS)
- Those, of any nationality, who last entered illegally on or after 1 January 1973
- Those who first entered illegally between 9 March 1968 and 1 January 1973, but later left and entered again on or after 1 January 1973 by deceiving an immigration officer as to their identity or entitlement to enter

5.4 The final date for receipt of applications resulting from either announcement was 31 December 1978.

## **6. Legality of UK residence following illegal entry**

### **6.1 Validity of leave to enter**

6.1.1 It is expressly provided by s.5(1) of the 1971 Act that any leave to enter or remain obtained by a person who, at the time, was subject to a deportation order is invalid. Paragraph 9(2) of Schedule 2 to the 1971 Act further provides that, so far as the power to detain or remove illegal entrants is concerned (see paragraph 1.1 above), any leave to enter obtained by deception is to be disregarded. These two exceptions aside, the general rule is that any leave to enter obtained by deception is not void, but holds good until such time, if any, as the person is removed (Khawaja).

### **6.2 Is residence pending removal "ordinary residence" for BNA purposes?**

6.2.1 Section 50(5) of the BNA 1981 equates ordinary residence with lawful residence for nationality purposes. Although there is room for doubt on the matter, the implication of the decision in Khawaja seems to be that an illegal entrant breaches the immigration laws only at the moment of entry. In other words, the quality of any subsequent residence in the United Kingdom is not affected by the fact that the person continues to be removable, if detected, under the powers conferred by Schedule 2 to the 1971 Act. Provided the criteria listed in paragraph 1 of "ORDINARY RESIDENCE" are satisfied, the person may, in the meanwhile, be regarded as ordinarily resident in this country.

## **7. Any case of suspected illegal entry should be referred to the appropriate team in the Illegal Entry Section depending on the file reference (see below).**

Team 1: 00-19  
Team 2: 20-39  
Team 3: 40-59  
Team 4: 60-79  
Team 5: 80-99