

# The Migrants' Law Project

## Factsheet: Right to Private and Family Life

- The right to respect for private and family life is enshrined in Article 8 of the European Convention on Human Rights and is incorporated into UK law through the Human Rights Act 1998.
- However, Article 8 of the European Convention is not an absolute right. The state can lawfully interfere with an applicant's right to private and family life as long as it is pursuing a legitimate aim and it is necessary and proportionate in all the circumstances of the case.
- The starting point is that the state has the right to control the entry and residence of people within its borders. In the UK this is done through the immigration rules and various policies, which set out the requirements for leave to enter or remain.
- The private and family life provisions contained in the immigration rules (paragraph 276ADE, Appendix FM and Part 13) are now said to reflect the Home Office position in relation to Article 8.
- However, there may still be cases where the immigration rules do not adequately address private or family life issues. In such cases it can still be possible for Article 8 to be engaged "outside the rules".
- The assessment of Article 8 outside the rules involves the striking of a fair balance between the rights of the individual and the public interest considerations of the whole community (see illustration). The stronger the public interest considerations the more likely it is they will outweigh individual rights e.g. a serious criminal offence or a very poor immigration history.

### IN FAVOUR OF THE INDIVIDUAL

A good immigration history

A long period of residence

High level of integration in the UK

Speaks English

Able support him or herself without recourse to public funds

Established private or family life when immigration status was lawful

Is the parent of a British child or a child who has been resident for a continuous period of 7 years where it would be unreasonable to expect the child to leave the UK

No criminal convictions

Compassionate circumstances

But... in general will still need to show compelling circumstances if the applicant does not meet the requirements of the immigration rules, which are deemed to reflect Article 8 in most cases. There are some other Article 8 arguments that can be made 'outside the rules'.

### IN FAVOUR OF THE PUBLIC INTEREST

Does not meet the requirements of the immigration rules or policies

A poor immigration history

A short period of residence with little integration

Remaining for long periods without lawful leave to remain

Abuses of the immigration system at the more serious end of the scale e.g. fraud, deception, false docs

Does not speak good English

May not be able to support him or herself without recourse to public funds

Established private or family life when their immigration status was precarious or unlawful

Criminal offences are given very significant weight. Immigration rules are deemed a "complete code" to Article 8 in deportation cases

