



## Immigration and Refugee Board of Canada

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## RESPONSES TO INFORMATION REQUESTS (RIRs)

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23 February 2005

### NPL43396.E

Nepal: The application process to obtain United Kingdom citizenship for members of the Gurkhas Brigade who were discharged after July 1997; whether the citizenship acceptance is automatic for qualified individuals (February 2005)  
Research Directorate, Immigration and Refugee Board, Ottawa

In 21 February 2005 correspondence sent to the Research Directorate, the Nationality Policy and Special Cases Unit of the Immigration and Nationality Directorate in the UK provided the following information.

Prior to 25 October 2004 it was very difficult for Gurkhas to obtain settled status in the UK and consequently British citizenship was also difficult to obtain. Following a review into this new immigration rules were introduced on 25 October 2004 which means that ex-servicemen who have served four or more years in the British armed forces will be able to obtain indefinite leave to enter or remain (ILE/ILR) in the UK, if an application is made within two years of discharge. Additionally ex-Gurkhas must have been discharged on or after 1 July 1997 to be eligible.

Once they have ILR/ILE, ex-Gurkhas will be free to live and work in the UK indefinitely. In addition they will, in time, usually be able to apply for British citizenship, although whether or not they are granted citizenship will depend [on] if they can meet the relevant criteria, including having five years lawful residence in the UK immediately prior to the date of application. Time spent in the UK armed forces can count towards this residence requirement and to account for the potentially long periods of absence servicemen may have had from the UK (as a result of overseas tours of duty) we will waive higher than normal levels of absences in these case.

The British Army website also provides the following information on the new "Her Majesty's Forces Immigration Rules (HMFIR)" in place since 25 October 2004.

#### Definition of Gurkha:

The term "Gurkha" means a citizen or national of Nepal who has served in the Brigade of Gurkhas of the British Army under the Brigade of Gurkhas' terms and conditions of service.

### **Requirements for indefinite leave to enter the United Kingdom as a Gurkha discharged from the British Army.**

The requirements for indefinite leave to enter the United Kingdom as a Gurkha discharged from the British Army are that:

1. the applicant has completed at least four years' service as a Gurkha with the British Army; and
2. was discharged from the British Army in Nepal on completion of engagement on or after 1 July 1997; and
3. was not discharged from the British Army more than 2 years prior to the date on which the application is made; and
4. holds a valid United Kingdom entry clearance for entry in this capacity.

### **Some Changes to the Immigration Rules for Gurkhas - (HMFIR)**

[...]

HMFIR now allows Gurkha service in the British Army to be treated as approved employment (evidence of settlement) for the purposes of supporting an application for Indefinite Leave to Enter (ILE) the UK. Therefore, after discharge in Nepal a retired Gurkha will be able to return to the UK without needing a work permit as long as he has completed 4 years of service and his discharge took place after 1 Jul 97. They must apply for ILE from overseas, although during a transitional period (Oct 04 - Oct 06) applications will be accepted from those already in the UK who need to regularize their immigration status. The application for ILE must be made within 2 years of discharge or by 25 Oct 06 if the soldier has already retired. The Home Office retains discretion in granting ILE for those who were discharged before 1 Jul 97 and would base its decision on the individual's links to the UK through, for example, work, education or family.

[...]

The HMFIR does not lead automatically to British citizenship. An individual may choose, separately, to make an application for naturalization if he meets the qualifying criteria, part of which is a period of settlement, which Gurkha service now counts towards. In effect, an individual who has qualified under the HMFIR will be able to gain British citizenship soon after arrival in the UK.

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection.

#### References

United Kingdom (UK). 21 February 2005. The Immigration and Nationality Directorate. Correspondence from the Nationality Policy and Special Cases Unit

\_\_\_\_\_. 3 February 2005. The British Army. *Her Majesty's Forces Immigration Rules (HMFIR)*: An extract from "Statement of Changes in Immigration Rules" Published on 18 October 2004, Reference HC 1112 London: The Stationery Office. <[http://www.army.mod.uk/brigade\\_of\\_gurkhas/hmfir.htm](http://www.army.mod.uk/brigade_of_gurkhas/hmfir.htm)> [Accessed 18 Feb. 2005]

  
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