

Not Wanted at the Border: A Brief Explanation of Traveling to the United Kingdom with a Criminal Conviction

by Patti Kemp and Edward C. Corrigan

While most people are aware that a criminal conviction can have an impact on your ability to travel to the United States, many are not aware that a criminal conviction can also determine whether you are allowed to visit the United Kingdom.

Travelers who simply want to visit the UK as a visitor need to determine if they fall into one of two categories: visa or non-visa nationals. Non-visa nationals do not need to apply for a visa before they arrive at the UK border. Visa nationals are individuals from certain countries who need to apply for a visa before arriving at the UK border. The Visa National List can be found at Appendix 2 of the Immigration Rules for visitors (Appendix V).[1] Visa nationals are required to disclose any criminal convictions on the application form.

The United States and Canada are not on the Visa National List and therefore American and Canadian citizens are non-visa nationals. Americans and Canadians who want to visit the United Kingdom as visitors do not need to apply for a visa in advance. They simply apply for leave to enter when they arrive at the border (for example, when they arrive at Heathrow airport).

However, the UK government advises non-visa nationals, such as Americans and Canadians, with criminal convictions to apply for a visa in advance. This way, they disclose their criminal conviction in the application and an immigration officer can determine if they are eligible to enter the UK before they travel. Individuals with convictions who do not apply for a visa in advance risk being refused entry to the UK at the border.

The rules surrounding criminal convictions can be found under Part V3 of the United Kingdom Immigration Rules, "Suitability Requirements for All Visitors".[2] For criminal convictions that have resulted in a custodial sentence, immigration officers look at two conditions: the length of the sentence received upon conviction and how long it has been since the sentence finished and all of its conditions are completed (also known in the United Kingdom as being "spent".)

For individuals who have been sentenced to a period of imprisonment, the Rules set out the following conditions:

- If the individual received a sentence where they were imprisoned for a period of less than twelve months, they will automatically be refused entry to the UK unless at least five years has passed since the end of their sentence. This includes payment of all fines and completing all conditions of parole;
- If they received a sentence between 12 months and four years, they will be automatically refused entry unless a period of at least ten years has passed since the end of their sentence;
- If they received a sentence of at least four years, they will be automatically refused.[3]

The only way that a visitor can get over these conditions is if they can show that there are compelling factors for their visit that outweigh the public interest in refusing their visa application. The Rules state that these conditions will only be waived in exceptional circumstances – the bar is set very high.

The conditions are less onerous for individuals who have been convicted of an offence but who have not received a custodial sentence, for example a fine or period of probation that appears on their criminal record. If, in the 12 months before their visa application is decided, an individual has been convicted of an offence, or has admitted an offence (pleaded guilty) and received a non-custodial sentence or out of court disposal that is recorded on their criminal record, their application will normally be refused.[4] Therefore, the individual can either apply for their visa 12 months after the date of their sentence, or if they can show that there are compelling reasons for their visit, they may succeed on an application made in less than 12 months.

Applicants can still be refused even if they meet the above criteria as being eligible to visit. The United Kingdom Secretary of State can decide that their offending "has caused serious harm"[5] or they are "a persistent offender who shows a particular disregard for the law." [6] Furthermore, there is a catchall section where the Secretary of

State can decide to exclude someone from Great Britain if their exclusion is conducive to the public good. The Immigration Rules gives the example of "the applicant's conduct (including convictions which do not fall within paragraph V3.4), character, associations, or other reasons."^[7] Exclusion orders are rare but do occur.

This area of law can seem complex but it is important for an individual wishing to travel to the UK who has a criminal conviction to understand the entry requirements. Entry with a criminal conviction is not straightforward and it makes sense to know the law rather than risk being turned away upon arrival.

[1]<https://www.gov.uk/guidance/immigration-rules/immigration-rules-appendix-v-visitor-rules>

[2]<https://www.gov.uk/guidance/immigration-rules/immigration-rules-appendix-v-visitor-rules>

[3]UK Immigration Rules, Part V3.4

[4]Immigration Rules, Part V3.5(a)

[5]Immigration Rules, Part V3.5(b)

[6]Immigration Rules, Part V3.5(c)

[7]Immigration Rules, Part V3.3

Reprinted with permission.

About The Author

Patti Kemp is a member of the Law Society of England and Wales and the Law Society of Upper Canada. She trained and practised as a solicitor at Birnberg Peirce & Partners in London, England. She works part-time for Edward C. Corrigan in London, Ontario.

Edward C. Corrigan is certified as a specialist by the Law Society of Upper Canada in Citizenship, Immigration and Immigration and Refugee Law. His office is located at 383 Richmond Street Suite 902, London, Ontario, Canada N6A 3C4. tel. 519-439-4015. He can be reached at corriganlaw@edcorrigan.ca.

The opinions expressed in this article do not necessarily reflect the opinion of ILW.COM.