

ILPA information sheet

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Statelessness

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Who is Stateless?

A stateless person is defined by international law (1954 Convention Relating to the Status of Stateless Persons) as a person who is, '*not considered a national by any state under the operation of its law*'.

You may also hear the term "de facto" stateless used. This is not a technical term. It is used for those who are not really stateless because they have a nationality but who have problems in benefiting from that nationality in practice. Because of frequent reference to de facto statelessness, the stateless are sometimes known as "de jure" (as a matter of law) stateless.

The stateless include people who have recently migrated and people who have been born in or lived in the same place for years. Statelessness can occur in many ways, for example when there is a conflict of laws between States, when a State becomes independent and fails to include certain people or when there is discrimination against minority groups in nationality legislation.

Who can be granted leave to remain as a stateless person?

On 6 April 2013, UK introduced provision in the Immigration Rules to recognise and grant leave to remain to certain stateless persons. (Part 14 of the Immigration Rules). Before that date there was a procedure for stateless persons to obtain travel documents (which still exists) but not for them to obtain leave as stateless persons. They were often left in legal limbo with no procedure to regularise their status.

The rules do not cover the 'de facto stateless.' Where a person has tried repeatedly and unsuccessfully to obtain documents from their country of origin there is likely to be a point at which it can be said of them that they are not recognised as a national by any State by operation of its law. At this point they are stateless, not "de facto stateless." Such persons may benefit from the new rules.

A person must be in the UK to apply under the new rules and port applicants are excluded. A person will be able to benefit from the new rules where they meet the international definition of a stateless person as set out above and are not excluded. The reasons for exclusion are based on the 1954 Convention but the way in which they are dealt with in the immigration rules are not precisely reflect the Convention. These reasons are:

- That they are already receiving United Nations assistance (this applies to certain, but not all Palestinian national);
- That there are serious reasons to believe that they have committed war crimes, crimes against humanity (etc.) or serious non political crimes outside the UK;
- That they are recognised by the country in which they used to live as having all the rights and obligations of a citizen in that country. This is different from the wording in the Convention, which refers to the country in which they have taken up residence, for example those who have come to live in the UK (no one is very sure precisely what this ground for exclusion means whether in the Convention or in the Immigration Rules and it is very difficult to think of any examples).

An applicant will be refused if s/he does not meet the definition of statelessness but also if:

- there are reasonable grounds to consider that they would be a danger to the security of the UK or a risk to public order; or
- they fall under any of the general grounds for refusal that are set out in rule 322 of the Immigration Rules; or
- there is a country to which they would be admitted.

The general grounds of refusal are ill-suited to applications from stateless persons.

As to the question of the country to which they would be admitted, nothing in the immigration rules indicates that this must be on a permanent basis, in circumstances where the person can stay and enjoy protection in that country. This may be an area of difficulty.

How to make an application

An application for leave to remain as a stateless person must be made by post on form FLR(S). There is no application fee for the initial application. The applicant will be required to submit evidence in support of his/her application, including reasons why they believe that they are stateless and any evidence to show that they are not a national of their country of birth or ancestry (or any other). The Home Office should also make enquiries but it is presently unclear how rigorous these enquiries will be. Suggested evidence of statelessness is on the Home Office website at: <http://www.ukba.homeoffice.gov.uk/visas-immigration/while-in-uk/stateless/>.

The Home Office anticipates that most applications will come from people whose applications for asylum have failed. It has said that it will decide any claim for asylum first and will not consider those recognised as refugees under this procedure at all. However, nothing in the rules prevents a person who has never applied for asylum from applying for leave as a stateless person and nothing can prevent a person found not to be stateless, subsequently applying for asylum.

Legal Aid is not available for legal advice and assistance with a stateless application. There are no additional support provisions for people who have applied for leave to remain as a stateless person. The only financial support and accommodation available to a destitute applicant is 'section 4 support'.¹

Family members can be included in an application (they do not have to be stateless) and if the application is successful, they will be granted leave to remain for the same period (see below).

Grants of leave to remain in the UK as a stateless person

A person will be given 30 months (2.5 years) leave to remain as a stateless person and can apply to extend this leave and after five years apply for indefinite leave to remain. Subject to satisfying the requirements, they can subsequently apply to naturalise as British. The Home Office intends that fees will be payable for all these subsequent applications. Family members (whether or not stateless) can apply to join the stateless person

If a stateless application is refused.

There is no specific right of appeal against a decision to refuse the application, although appeal rights may arise for those who have leave at the time of making their statelessness application and statelessness may be an issue in a challenge to removal. The Home Office should give reasons for refusing an application and a refusal may be open to a challenge by way of a claim for judicial review.

It is advisable to seek legal advice before submitting an application for leave to remain as a stateless person and certainly before withdrawing an asylum claim. Advice on the implications of withdrawing an asylum claim continues to be covered by legal aid.

¹ Section 4, Immigration and Asylum Act 1999