



Home Office

Asylum Policy Instruction

Statelessness and applications for leave to remain

Version 2.0

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Contents

Contents.....	2
About this guidance.....	4
Contacts	4
Clearance	4
Changes from last version of this guidance	4
Section 1: introduction.....	5
1.1 Purpose of instruction	5
1.2 Background.....	5
1.3 Policy intention.....	6
1.4 Application in respect of children	6
Section 2: relevant legislation.....	8
2.1 Statelessness Conventions.....	8
2.2 The Immigration Rules.....	8
Section 3: initial procedures	9
3.1 Application process and admissibility.....	9
3.2 Evidence from previous asylum claims	9
3.3 EEA/EU and ‘Dublin’ cases.....	9
3.4 Interview policy and written enquiries	9
3.5 Dependants included in the application	10
Section 4: assessing statelessness and considering applications.....	11
4.1 Definition	11
4.2 Burden and standard of proof	11
4.3 Gathering and assessing evidence	12
4.3.1 Documentary and testimonial evidence	12
4.3.2 Passports	13
4.3.3 Conducting interviews	13
4.3.4 Language analysis	14
4.3.5 Country of origin information (COI)	14
4.3.6 Enquiries with overseas governments or authorities.....	14
4.4 Assessment of the evidence	14
4.5 Applying the stateless definition to an application.....	15
4.5.1 Applying the ‘by any State’ element.....	15
4.5.2 Applying the ‘not considered as a national’ element	16
4.6 Establishing nationality in stateless cases	16

4.6.1	Those not considered as nationals under State law and practice	16
4.6.2	Acquiring nationality	16
4.6.3	Decisions made by the national authorities	17
4.6.4	Absence of evidence of the national authorities position.....	17
4.6.5	The response to enquiries with overseas governments	18
4.6.6	Voluntary renunciation of nationality	18
4.6.7	Nationality acquired in error or bad faith	18
5.1	Existing protection arrangements.....	20
5.2	Habitual residence cases	20
5.3	War crimes, crimes against humanity or other serious criminality.....	20
5.4	Danger to security or public order	21
5.5	General grounds for refusal	21
6.1	Grant of leave to remain	22
6.2	Refusal of leave to remain	22
6.3	Further submissions and repeat applications.....	22
6.4	Family members	23
6.5	Administrative reviews	23
Section 7: travel documents		24

About this guidance

This guidance is for all staff dealing with applications for leave on the basis of statelessness. It explains the policy, process and procedure which must be followed when considering applications for leave to remain as a stateless person under Part 14, [Paragraphs 401 to 416 of the Immigration Rules](#).

Contacts

If you have any questions about the guidance and your line manager or senior caseworker cannot help you or you think that the guidance has factual errors, please email the Asylum Policy team.

If you notice any formatting errors in this guidance (broken links, spelling mistakes and so on) or have any comments about the layout or navigability of the guidance then you can email the Guidance Rules and Forms team.

Clearance

Below is information on when this version of the guidance was cleared:

- version **2.0**
- published for Home Office staff on **18 February 2016**

Official – sensitive: start of section

- the information on this page has been removed as it is restricted for internal Home Office use

Official – sensitive: end of section

Changes from last version of this guidance

- changes to the policy on conducting interviews where a stateless leave application falls for refusal
- updated section on voluntary renunciation of nationality

Related content

[Contents](#)

Section 1: introduction

1.1 Purpose of instruction

This guidance explains the policy, process and procedure which must be followed when considering applications for leave to remain as a stateless person under Part 14, [Paragraphs 401 to 416 of the Immigration Rules](#). It applies to all staff dealing with statelessness applications and covers:

- the definition of statelessness
- evidence gathering and how to consider applications, including in respect of dependants
- the application of the exclusion provisions and general grounds for refusal

This policy does not apply to individuals with an outstanding protection claim (asylum or humanitarian protection) (see [section 3.1](#)).

1.2 Background

Statelessness occurs for a variety of reasons, including discrimination against minority groups in nationality legislation, failure to include all residents in the body of citizens when a state becomes independent (state succession) and conflicting laws between states. In some countries, citizenship can be lost automatically after prolonged residence in another country. The absence of proof of birth, origins or legal identity in a number of countries can also increase the risk of statelessness.

Possession of nationality is considered essential for full participation in society and a prerequisite for the enjoyment of the full range of human rights. Stateless people are not necessarily at risk of persecution or serious harm but they are potentially vulnerable to serious discrimination. They may, for example, be denied the right to own land or exercise the right to vote. They are often unable to obtain identity documents. They can be denied access to education and health services or blocked from obtaining employment.

In 1954, the United Nations adopted the Convention Relating to the Status of Stateless Persons, which the UK ratified in April 1959. The Office of the United Nations High Commissioner for Refugees (UNHCR) has a mandate to work with governments to prevent and reduce statelessness and to identify and protect stateless persons. In April 2013, the UK incorporated a new procedure under the Immigration Rules to enable stateless persons to be formally determined as stateless, and to be granted leave to remain where they had no other right to remain under the Rules but could not be removed to the country of former habitual residence.

The guidance in this instruction is drawn from the UNHCR guidelines, now set out in its [2014 Handbook on Protection of Stateless Persons](#), although it does not follow those guidelines in every respect. Where there are differences, this instruction must be applied.

1.3 Policy intention

The underlying policy objective is to:

- ensure we fully comply with our international obligations under the UN Statelessness Conventions
- provide a means for the consideration of those who are stateless and who have no other right to remain in the UK but who cannot be removed because they would not be admitted to another country for purposes of residence to be allowed to stay
- exclude from a grant of leave to remain those who have committed a crime against peace, a war crime, a crime against humanity, a serious non-political crime prior to arriving in the UK, are guilty of acts contrary to the purposes and principles of the United Nations or for whom there are reasonable grounds for considering they are a danger to the security or the public order of the UK

1.4 Application in respect of children

Section 55 of the Borders, Citizenship and Immigration Act 2009 requires the Home Office to carry out its existing functions in a way that takes into account the need to safeguard and promote the welfare of children in the UK. Caseworkers must not apply the actions set out in this guidance either to children or to those with children without considering the individual circumstances of the case and the impact on children. The instruction 'Every Child Matters - Change for Children' sets out the key principles to take into account.

The statutory duty to children includes the need to demonstrate that applications are dealt with in a timely and sensitive manner where children are involved. In accordance with the UN Convention on the Rights of the Child (UNCRC) and the Supreme Court judgment in [ZH \(Tanzania\) \(FC\) \(Appellant\) v SSHD](#), the best interests of the child are a primary consideration, although not necessarily the only consideration, when making decisions affecting children. This applies whether the child is the direct subject of the application, or an adult applicant is the primary parent or guardian of a child in the UK, or has genuine and subsisting family life with a child in the UK.

Article 7 of the UNCRC provides that children have the right to a nationality. Children, especially unaccompanied children, may face acute challenges in communicating basic facts about their nationality. Close attention must always be given to the welfare and best interests of the child when considering their nationality status and potential that they may be stateless. This involves the same procedural and evidentiary safeguards for child claimants as apply in asylum claims, including priority processing of their claims and the provision of appropriately trained interviewers, legal representatives and interpreters, where an interview is undertaken. It also requires the caseworker to assist in the determination of statelessness by making enquiries which the child is not in a position to undertake.

Consideration of the welfare and best interests of the child also applies where a child is included as a dependant in a stateless leave application. Ultimately, whether or not parents or children are stateless is a mixed assessment of fact and law. Where

statelessness is accepted for any members of the family and the question of admissibility is at issue, whilst the best interests of any children will be a primary consideration, a decision as to whether or not they qualify for leave under stateless provisions will depend on whether they are admissible to another country for purposes of permanent residence there.

Related content

[Contents](#)

Section 2: relevant legislation

2.1 Statelessness Conventions

[The 1954 Convention relating to the Status of Stateless Persons](#) regulates the status of non-refugee stateless persons and ensures that they enjoy human rights without discrimination. It sets out a common framework with minimum standards of treatment for stateless persons, provides them with an internationally recognised legal status, and (for example) offers access to travel documents for those lawfully staying in a territory.

[The 1961 Convention on the Reduction of Statelessness](#) is intended as the primary international legal instrument adopted to deal with the means of avoiding statelessness.

2.2 The Immigration Rules

[Paragraphs 401 to 416](#) in Part 14 of the Rules provide the procedural and policy framework for considering applications on the basis of statelessness.

All applications for leave as a stateless person under Paragraphs 401 to 416 must be made on the relevant application form on the Home Office website. [Paragraph 34](#), in Part 1 of the Immigration Rules, sets out the requirements for applications for leave to remain to be made using a specified form.

[Paragraph 322](#) in Part 9 of the Rules sets out the general grounds for refusing an application.

Related content

[Contents](#)

Section 3: initial procedures

3.1 Application process and admissibility

All applications must be made on the specified application form, FLR(S), which is available on the [GOV.UK](https://www.gov.uk) website, in accordance with [paragraph 34 of the Immigration Rules](#). Any attempt to make an application in any other way, for example by telephone or email, cannot be accepted. Forms may be updated so applicants must use the current form applicable on the date of application. The address to which applications must be sent is on the FLR(S) form and the GOV.UK website.

Applications for leave on the basis of statelessness will not be accepted for consideration until any asylum claim has been finally determined or withdrawn, including the consideration of any further submissions. Similarly, applications for leave to remain as a stateless person will not be accepted if they amount to the submission of further evidence relating to protection needs. These must be lodged in person in Liverpool in accordance with the published Further Submissions policy.

People who have previously been granted leave to remain in another capacity and who wish to apply for stateless leave should apply up to 28 days before their existing leave expires.

3.2 Evidence from previous asylum claims

Findings of fact relevant to determining whether a person is stateless which have previously been established during an asylum claim may be relied upon when considering a subsequent statelessness application, unless information is provided which calls those findings into question. External enquiries undertaken as part of the asylum process may also be relevant. For example, enquiries may have been made to national embassies or consulates to secure travel documents in relation to removal action following refusal.

3.3 EEA/EU and 'Dublin' cases

Leave on the basis of statelessness will not be considered for the family members of EU nationals who are exercising treaty rights and the family member already has a stateless travel document.

Where another EU Member State or Norway or Iceland is considered responsible for an asylum claim under the Dublin arrangements, separate applications for leave on the basis of statelessness will not be considered. However, as the Dublin provisions only apply where an asylum claim has been made, they will not be applicable where only a statelessness application has been made.

3.4 Interview policy and written enquiries

An interview will normally be arranged to assist the applicant to fully set out their case for being considered stateless and to submit any other relevant evidence. In other instances, questions about evidence submitted as part of the application may be resolved through additional written communications. Where the applicant does

not complete all relevant sections of the application form, caseworkers may request the missing information by writing to the applicant or their legal representative if they have one.

A personal interview will not be required if there is already sufficient evidence of statelessness, it is clear that the individual is not admissible to another country, and is eligible for leave to remain on this basis.

An interview will not be arranged, and the application may be refused, where recent and reliable information including the applicant's previous evidence or findings of fact made by an immigration judge, have already established that the applicant is not stateless or is clearly admissible to another country for purposes of permanent residence and where no evidence to the contrary has been provided.

If the applicant fails to attend an interview without a reasonable explanation or fails to reply to a written request for information, the application may be refused on the basis that they have failed to provide the required evidence, taking into account the [general grounds for refusal in paragraph 322 \(9\) and\(10\) of the Immigration Rules](#).

Interviews will be conducted and recorded in accordance with the standards set out in the published policy on Asylum Interviews.

3.5 Dependants included in the application

Spouses or partners and dependent children already accepted as such who are accompanying the applicant in the UK should, irrespective of their national status, be included in the application form. Where no previous application has been made for leave to remain, spouses or partners and dependent children can apply as the family members of a stateless person providing they meet the relevant requirements of the rules for dependants.

If a spouse or partner or child wishes to be considered individually as a stateless person, they must complete and submit a separate application. Where the factual basis for family members is the same, any related applications must be linked and considered together. If the main application is granted, family members are granted leave in line with the stateless person.

Related content

[Contents](#)

Section 4: assessing statelessness and considering applications

4.1 Definition

Article 1(1) of the 1954 Convention sets out the definition of a stateless person:

‘For the purpose of this Convention, the term ‘stateless person’ means a person who is not considered as a national by any State under the operation of its law.’

An individual is a stateless person from the moment that the conditions in Article 1(1) of the 1954 Convention are met. This means that any finding by a State, or UNHCR, that an individual satisfies the test in Article 1(1) is a declaratory act, akin to recognition as a refugee under the 1951 Refugee Convention. The definition is reflected in [paragraph 401\(a\) of the Immigration Rules](#).

4.2 Burden and standard of proof

In all cases, the burden of proof rests with the applicant, who is expected to co-operate with the caseworker to provide information to demonstrate they are stateless and that there is no country to which they can be removed. Paragraph 403(d) of the Rules requires applicants to obtain and submit all reasonably available evidence to enable the Secretary of State to determine whether they are stateless and whether they qualify for stateless leave. It is not enough, for example, for the applicant to rely upon a simple and unsupported assertion of statelessness, or to provide no explanation or evidence in support of the application, particularly where this runs contrary to previously available factual information.

However, caseworkers must make a distinction between applicants who show no interest in genuinely co-operating or providing supporting information and those who may be unable to submit much evidence or information because, for example, they do not have the resources or knowledge to obtain information about the laws of a given State. In such circumstances, where the available information is lacking or inconclusive, the caseworker must assist the applicant by interviewing them, undertaking relevant research and, if necessary, making enquiries with the relevant authorities and organisations.

Enquiries of the authorities of the country of former habitual residence which disclose the applicant’s personal details must be done with the written consent of the applicant, but if that consent is denied without good reason (for example, it has already been established that the person’s claimed fear of those authorities was not well-founded), it may be inferred that the applicant is not genuinely willing to cooperate and is failing to discharge the burden of proof, taking account of all the available information. [See Section 4.3 below](#) and [Section 4.3.5 Enquiries with other governments or authorities](#).

The applicant is required to establish that he or she is not considered a national of any State to the standard of the balance of probabilities (that is more likely than not),

since the factual issues to be decided justify a higher standard of proof than the reasonable likelihood required to establish a well-founded fear of persecution in asylum claims, where the issue may be the threat to life, liberty and person.

4.3 Gathering and assessing evidence

Statelessness determination requires a mixed assessment of fact and law. The information that may be relevant can be divided into 2 categories:

- evidence relating to the individual's personal circumstances submitted as part of the application process
- evidence concerning the law and practice in the country in question, both with regard to the individual concerned, and also to the group (or groups) of individuals to which the applicant belongs

Caseworkers may need to make further enquiries as part of the consideration process. This may be undertaken before or after an interview has taken place.

4.3.1 Documentary and testimonial evidence

Evidence documenting personal history can help identify the State (or States) whose nationality laws and procedures need to be considered in determining an applicant's nationality status. This is not an exhaustive list, but examples of evidence may include:

- testimony of the applicant (written application and/or oral evidence at interview)
- responses from foreign authorities to an enquiry regarding nationality status of an individual ([see section 4.3.6 below](#))
- identity documents (for example, birth certificate, extract from civil register, national identity card, voter registration document), passports ([see 4.3.2 below](#)) or other travel documents (including expired ones)
- documents regarding applications to acquire, or obtain proof of, nationality
- certificate of naturalisation or certificate of renunciation of nationality
- previous responses by States to enquiries on the nationality of the applicant
- marriage certificate, military service record/discharge certificate, school certificates, medical certificates/records (for example, attestations issued from hospital on birth, vaccination booklets etc)
- identity and travel documents of parents, spouse and children, immigration documents, such as residence permits of their country or countries of habitual residence
- other documents pertaining to countries of residence, for example, employment documents, property deeds, tenancy agreements, school records, baptismal certificates and record of sworn oral testimony of neighbours and community members

Caseworkers must ensure that requests for information are realistic and reasonable. For example, there is no point asking for school records if there is no established practice in the country of origin of actually producing them. In some countries, women or members of ethnic minorities may have difficulty obtaining documents due

to discrimination. Where feasible, it may therefore be necessary for caseworkers to undertake their own further research to assist the applicant.

4.3.2 Passports

Apparently genuine, unexpired passports will usually raise a presumption that the passport holder is a national of the country issuing the passport and entitled to reside there unless there is evidence from country of origin information (COI) that an individual in the applicant's circumstances is not normally considered to be a national of that State. This may include, for example, where the document is shown to be a passport of convenience or the passport has been issued in error by an authority that is not competent to determine nationality issues.

In such cases the passport does not demonstrate that the individual is a national of that country. Equally, no presumption is raised by passports that are shown to be counterfeit or otherwise fraudulently issued. The burden of proof is on the applicant to demonstrate why their passport does not confer nationality but caseworkers should consider checking with national authorities to confirm whether a passport has been genuinely and correctly issued where it is alleged otherwise.

4.3.3 Conducting interviews

With the exception of the instances set out in [section 3.4](#) above, an interview will normally be necessary where there is insufficient evidence to make a decision. Paragraph 100 of the [UNHCR Handbook on Protection of Stateless Persons](#) sets out how interviews should be approached. Caseworkers should ask open-ended questions to encourage applicants to deliver as full an account as possible. Caseworkers must also take into account that applicants can only be expected to reply to the best of their ability and in some cases even basic information may not be known, for example, the place of birth or whether the birth was registered.

Applicants are expected to have made enquiries with relevant national authorities, unless there is good reason not to, or with friends or relatives, and should provide information about their endeavours in their application form, subsequent correspondence or during the interview. Caseworkers must establish what steps the applicant has taken to obtain any relevant documentation, including details of any enquiries with relevant authorities in the country of origin or habitual residence. See also [Section 3.4 above](#).

If the applicant has tried and failed to obtain relevant information from the national authorities, caseworkers should consider whether officials are more likely to receive a response, particularly if the State has previously demonstrated their cooperation with the Home Office.

Those who refer in correspondence or at interview to a fear of return to the country of habitual residence, or to family, private life or other human rights grounds, must be advised that such issues are not part of the stateless determination procedure. Applicants who want to raise protection grounds must do so in person by claiming asylum at the Asylum Intake Unit in Croydon or by lodging further submissions in person in Liverpool if they have previously made an asylum claim. Applicants who

wish to apply on any other ground must do so using the appropriate application form available on the GOV.UK website.

4.3.4 Language analysis

Although language analysis cannot determine the nationality of an individual, it may be considered in cases of real doubt as to an applicant's country or region of origin. Applicants refusing to participate in the language analysis process must be asked to explain why. Their responses must be taken into account as part of the consideration of the application.

4.3.5 Country of origin information (COI)

Caseworkers should undertake research into nationality and other relevant laws, including their implementation and the practices of the relevant State. This information can usually be found in published Home Office COI products or provided by the COI Request service, who may contact the Foreign and Commonwealth Office (FCO) and overseas posts where necessary. Where further research is considered necessary, information should be obtained via the Country Policy and Information Team (CPIT) Useful Sources List, reliable news media or from databases such as UNHCR Refworld. The reliability of the information obtained must be considered and the evidence corroborated from other sources where possible. Any COI gathered through independent research must be fed back to CPIT.

4.3.6 Enquiries with overseas governments or authorities

Information provided by foreign authorities may be of central importance to stateless determination procedures, although it will not be necessary if there is otherwise adequate evidence. The applicant must be asked to consent to these enquiries if they would in any way identify the applicant or their family and there must be no disclosure of the rejection of a previous asylum claim, if applicable.

Where a response from the State includes reasoning that appears to involve a mistake in applying the local law to the facts of the case or an error in assessing the facts, the caseworker must where possible seek clarification from the State concerned. Whilst it is the subjective position of the other State that is critical in determining whether an individual is its national for the purposes of the stateless person definition, caseworkers must take into account the evidence provided to the State by the applicant. If it is clear that the applicant has provided false or misleading information to State officials, this may be viewed as evidence of bad faith and may lead to a refusal of the application for stateless leave.

4.4 Assessment of the evidence

An individual's nationality is to be assessed as at the time of determination of the stateless application. It is not a historic or predictive exercise. Caseworkers must consider whether at the point of making a determination, an individual is or is not a national of the country or countries in question.

This means that if an individual is partway through a process for acquiring a nationality but those procedures have not been completed at the date of determination of the stateless claim, he or she cannot be considered to be a national

Page 14 of 24 Published for Home Office staff on 18 February 2016

for the purposes of Article 1(1) of the 1954 Convention. Caseworkers should establish with the applicant, and with the relevant authorities if necessary, the nature of any ongoing enquiries before making a decision on the application. Similarly, where requirements or procedures for loss, deprivation or renunciation of nationality have only been partially fulfilled or not been completed, the individual is still a national for the purposes of the stateless person definition.

A determination that the individual is currently stateless does not mean that the person is inadmissible, particularly where an individual has the means to obtain a nationality. In [R \(on the application of JM\) v Secretary of State for the Home Department \(Statelessness: Part 14 of HC 395\) IJR \[2015\] UKUT 00676 \(IAC\)](#), the Upper Tribunal found that the child, born in the UK of a foreign national, who seeks to be recognised as stateless, but who can under the law of the parent's nationality, obtain citizenship of that country by descent by registering their birth, could properly be regarded as admissible to that country, as set out at paragraph 403(c) of HC 395.

The judgment underlined the fact that the Immigration Rules have a 2 stage process:

1. Is the applicant stateless within the meaning of Para 401 of the Rules, depending on whether they are stateless at the date of the decision.
2. Does the applicant qualify for leave under paragraph 403? (It is 403(c) – ‘is not admissible to their country of former habitual residence or any other country’ – that the judgment was mainly aimed at).

4.5 Applying the stateless definition to an application

In order to casework an application for stateless leave the definition in Article 1(1) can be applied in 2 parts:

- ‘not considered as a national...under the operation of its law’
- ‘by any State’

4.5.1 Applying the ‘by any State’ element

It is only necessary to consider States with which an individual may be linked, whether by birth on the territory, descent, marriage, through a child or habitual residence. In some instances consideration of this element alone may be decisive, if the only country or entity to which an individual has a relevant link is not recognised as a State; for example, Palestine. However, in such cases, there may be other States in the region (or elsewhere) with which the applicant may be linked and where nationality may have been acquired. In addition, in relation to Palestine, the applicant may be excluded from recognition as a stateless person under Rule 402(a). [Section 5.1](#) of this guidance sets out the circumstances in which this may happen.

It will not be difficult in most instances to determine which country or entity is a ‘State’ and which is not, but for the purposes of this guidance, a ‘State’ will be one recognised as such by the UK. This is regardless of the effectiveness of its government. A State which loses an effective central government because of internal conflict will nevertheless remain a ‘State’ for the purposes of Article 1(1) for as long as it remains recognised as such by the UK.

4.5.2 Applying the ‘not considered as a national’ element

An understanding of the laws of nationality and their administration in practice in the applicable State or States concerned is required when considering a claim to be stateless. Caseworkers must refer to the published COI, consider whether a request should be made to CPIT and, where appropriate, to the FCO.

4.6 Establishing nationality in stateless cases

The law and practice of nationality can be complex. The following paragraphs, drawn from the [UNHCR Handbook on Protection of Stateless Persons](#), highlight the main elements in establishing nationality, or the lack of it. The reference to ‘law’ in Article 1(1) should be read broadly to encompass not just legislation, but also ministerial decrees, regulations, orders, judicial case law (in countries with a tradition of precedent) and, where appropriate, customary practice.

4.6.1 Those not considered as nationals under State law and practice

Establishing whether an individual is not considered as a national under the operation of its law requires an analysis of how a State applies its nationality laws in practice and has applied them to the individual applicant, taking account of any review or appeal decisions that may have had an impact on the individual’s status. The reference to ‘by the operation of its law’ in the definition of a stateless person in Article 1(1) is intended to refer to those situations where State practice does not follow the letter of the law.

The question to be answered is whether, at the point of making a determination, an individual is a national of the country in question. This also applies where an individual has provided evidence that they have made an application to the national authority only to find more and more evidence requested by the State in question, combined with long delays, which in practice amounts to a denial of recognition. Similarly, where requirements or procedures for loss, deprivation or renunciation of nationality (see section below on voluntary renunciation) have not been completed, the individual is still at the point of determination, a national for the purposes of the stateless person definition.

4.6.2 Acquiring nationality

In most countries, nationality is acquired automatically by birth on the territory or descent, or a combination of the two. Nationality may also be acquired automatically by most individuals affected by State succession (for example, successor states to those which have ceased to exist; those which separate from a State and become independent; or acquire territory from another State). The law in some States provides for automatic loss of nationality, when certain conditions are met, such as prescribed periods of residency abroad or failure to register or make a declaration within a specific period.

Where nationality is acquired automatically, documents are generally not issued by the State as part of the mechanism. In such cases, it is usually birth registration that provides proof of place of birth and parentage and thereby provides evidence of

nationality, either by jus soli (literally 'right of the soil' – a right by which nationality or citizenship is acquired by birth in the territory) or jus sanguinis ('right of blood' – acquired by parentage). Documents which serve as proof of nationality (for example, passports, citizenship certificates, identity cards) are typically not issued until later.

In non-automatic procedures, where an act of the State is required for acquisition of nationality, there will generally be a document recording that act, such as a citizenship certificate, and such documentation will usually be decisive in proving nationality. In the absence of such evidence, caseworkers may assume that the necessary action was not taken and therefore that nationality was not acquired. However, this cannot be taken for granted and the caseworker may decide it is necessary to obtain further evidence from the applicant or to ask the relevant overseas authority to confirm whether nationality was acquired by the applicant.

4.6.3 Decisions made by the national authorities

Where the national authorities have in practice treated an individual as a non-national even though:

- the applicant appears to meet the criteria for automatic acquisition of nationality under the operation of a country's laws
- the applicant has cooperated with reasonable requests from the State

it is the position of the national authorities rather than the letter of the law that is likely to be decisive in concluding that a State does not consider such an individual as a national. For example, this may occur where discrimination against a particular group is widespread in government departments or where, in practice, the law governing automatic acquisition at birth is systematically ignored and individuals are required instead to prove additional ties to a State.

4.6.4 Absence of evidence of the national authorities position

There may be cases where an individual has never come into contact with a State's authorities, perhaps because acquisition of nationality was automatic at birth and a person has lived in a region without public services or has never applied for identity documents or a passport. In such cases, it is important to assess the State's general attitude in terms of nationality status of those in a similar situation.

If the State has a good record in terms of recognising, in a non-discriminatory fashion, the nationality status of all those who appear to come within the scope of the relevant law, for example in the manner in which identity card applications are handled, this may indicate that the person who appears to fulfil the criteria in the nationality law is considered as a national by the State. Written enquiries of the State's representatives may be required to resolve any doubts. If evidence exists that the individual belongs to a group whose members are routinely denied identification documents issued only to nationals, this may indicate that they are not considered as a national by the State. Caseworkers must not assume or accept this without further inquiry.

4.6.5 The response to enquiries with overseas governments

These may be met either with silence or a refusal to respond to the specific request whether this is made by the individual applicant or by the caseworker. It is a matter for judgement in the individual case as to how long it is reasonable to wait. Wherever possible, the caseworker must progress the case to conclusion and no time should be wasted waiting for a response, particularly if the State's representatives have a general policy or practice of never replying to such requests. Caseworkers must not make any automatic assumptions as the result of another State's failure to respond.

In cases where a State has previously routinely responded to similar queries from the Home Office, a lack of response can usually be taken as evidence that the individual is not known to the State.

Where a State representative responds to an enquiry and it is clear that the authority has not examined the particular circumstances of an individual's position, the caseworker should attach little weight to that response in considering the application.

4.6.6 Voluntary renunciation of nationality

Voluntary renunciation occurs when an individual gives up his or her nationality through choice, usually by oral or written declaration. The subsequent withdrawal of nationality by the State may be automatic or at the discretion of the authorities. Although many States have safeguards in their nationality laws to prevent this from leading to statelessness, it continues to occur.

Sometimes individuals have to renounce their nationality in order to naturalise in another State and may then remain stateless if they do not acquire the second nationality. In other cases individuals voluntarily renounce their nationality because they do not wish to be nationals of a particular State or in the belief that this will lead to the grant of a protection status in another country. Those who have renounced their nationality voluntarily may be able to reacquire such nationality, unlike other stateless persons.

The question of an individual's free choice is not relevant when determining eligibility for recognition as stateless under Article 1(1) of the 1954 Convention, even if it appears that the applicant may have been motivated by the prospect of securing leave to remain as a stateless person. The applicant must nevertheless be asked the reason for renunciation and the possibility of re-acquiring that nationality must be examined very carefully in such cases. Loss of nationality and consequential statelessness will not necessarily prevent re-admission to the country concerned. Where there is evidence to suggest that someone has deliberately renounced nationality in an attempt to benefit from stateless provisions, and there remains an option for them to approach the relevant State to reacquire their former nationality, the stateless application should be refused.

4.6.7 Nationality acquired in error or bad faith

If an individual acquires nationality based on an error by the overseas government in a non-automatic mechanism, for example, because of a misunderstanding of the law that applies or in bad faith, this does not in itself invalidate the individual's nationality

status. This flows from the ordinary meaning of the terms employed in Article 1(1) of the 1954 Convention.

The same is true if the individual's nationality status changes as a result of a fraudulent application by the individual, or one which inadvertently contained mistakes regarding material facts. For the purposes of the definition, conferrals of nationality under a non-automatic mechanism are to be considered valid even if there is no legal basis for such conferral. However, in some cases the State, on discovering the error or bad faith involved in the nationality procedure in question, will subsequently have taken action to deprive the individual of nationality and this will need to be taken into account in determining the State's position on the individual's current status.

The impact of fraud or mistake in the acquisition of nationality is to be distinguished from the fraudulent acquisition of documents which are presented as evidence of nationality. These documents will not necessarily support a finding of nationality as in many cases they will be unconnected to any nationality mechanism, automatic or non-automatic, which was actually applied in respect of the individual.

Related content

[Contents](#)

Section 5: exclusion

The Immigration Rules set out instances where exclusion from recognition as a stateless person will apply or where leave to remain should be refused on grounds of the applicant's character or conduct.

5.1 Existing protection arrangements

Paragraph 402 (a) of the Immigration Rules mirrors the provision of Article 1(2)(i) of the 1954 Stateless Convention. This means that in practice, stateless Palestinians do not come within the scope of the 1954 Stateless Convention if they are already given the protection and assistance of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA). However, they may come within the scope of the Stateless Convention if they have not received that assistance, or have ceased to receive assistance for reasons beyond their control and independent of their volition. For further information see Article 1D guidance and the [Operational Guidance Note](#) on asylum claims by persons from the Occupied Palestinian Territories.

5.2 Habitual residence cases

Paragraph 402 (b) of the Immigration Rules mirrors Article 1(2)(ii) of the 1954 Convention. It excludes from the Convention's scope those who do not have the nationality of the State in which they are habitually resident but who have, to all intents and purposes, the rights of those in that State who do. A strict test is required in order to be excludable under Article 1(2)(ii).

This also reflects the provisions of Article 1E of the Refugee Convention. This means that where an individual a) has secure residence in the country with respect to which the application of Article 1(2)(ii) is being examined, and b) has been recognised by the competent authorities of that country as having the rights and obligations attached to possession of nationality of that country, they will not qualify for leave to remain as a stateless person.

UNHCR's [Note on the Interpretation of Article 1E of the 1951 Convention relation to the Status of Refugees](#), provides further guidance on criteria relating to residency and the rights and obligations attached to the possession of nationality relevant to the interpretation of Article 1(2)(ii) (see particularly paragraphs 9 to 16). Article 1(2)(ii) only applies to cases where the person is **currently** recognised by the country concerned as having these "rights and obligations". If the competent authorities of the country concerned recognized the person as having such rights in the past but no longer endorse this recognition, Article 1(2)(ii) and paragraph 402(b) of the Immigration Rules are inapplicable.

5.3 War crimes, crimes against humanity or other serious criminality

Article 1(2)(iii) of the 1954 Convention excludes from its scope those persons for whom there are serious reasons for considering that they have committed war

crimes, crimes against peace or humanity, serious non-political crimes, or acts contrary to the purposes and principles of the United Nations. This reflects the provisions of Article 1F of the Refugee Convention. Paragraph 402 (c) to (e) and 404(b)(i-ii) of the Immigration Rules are to be understood in a manner consistent with the [Asylum Instruction on Exclusion: Article 1F of the Refugee Convention](#).

The burden of proving that an individual falls within these provisions lies with the Secretary of State, and caseworkers must have 'serious reasons for considering' that an individual meets the criteria. This requires 'strong' or 'clear and credible evidence' that the individual has committed the crimes or performed the acts in question. The standard of proof is not as high as the criminal standard of 'beyond reasonable doubt', but it requires caseworkers to weigh up all the evidence and come to a reasoned conclusion – 'considering' goes further than simply 'suspecting' or 'believing'.

5.4 Danger to security or public order

Immigration Rule 404 (b) permits the refusal of leave as a stateless person where there are 'reasonable grounds' for considering that the individual is a danger to the security or public order of the UK. This is to be understood in a manner consistent with the interpretation of the equivalent provisions in [Rule 334\(iii\) and 339D\(iii\) of the Immigration Rules](#) on asylum and humanitarian protection. The burden of proof in these cases lies with the Secretary of State, who must 'be satisfied' that such reasonable grounds exist. As with the exclusion provisions ([see section 5.3 above](#)), strong, clear and credible evidence must be present.

5.5 General grounds for refusal

Immigration Rule 404 (c) permits the refusal of an application if any of the grounds set out in paragraph 322 – the General Grounds for Refusal (GGfR) apply. The GGfR are fully set out in Part 9, [paragraph 322 of the Immigration Rules](#). Further details on applying the GGfR can be found in the General Grounds for Refusal guidance.

Related content

[Contents](#)

Section 6: deciding applications

6.1 Grant of leave to remain

Paragraph 403 of the Immigration Rules sets out the requirements that must be met for a grant of limited leave on the basis of statelessness. Leave to remain will be granted where the person fulfils the requirements of Rule 403 and does not fall within the provisions of Rule 404(b) or (c).

Leave to remain as a stateless person is granted in accordance with paragraph 405 of the Immigration Rules, which states that leave will normally be granted to the applicant and their family members for an initial period of no more than 30 months. Those granted leave to remain are entitled to take employment and have access to public funds. Subsequent periods of leave can be granted providing the applicant continues to meet the relevant criteria. Indefinite leave to remain may be granted if the applicant meets the requirements of paragraph 407 of the Immigration Rules.

6.2 Refusal of leave to remain

An applicant who does not meet the requirements of paragraph 403 or who falls within the terms of paragraph 404 must be informed of the decision in a letter which sets out the reasons and informs the applicant how to seek an administrative review of the decision. Where an applicant does not meet the requirements of paragraph 403(c) of the Immigration Rules, because they are admissible to their country of former habitual residence or any other country, the decision letter must clearly indicate whether they are nevertheless recognised as being stateless in accordance with paragraph 401(a) of the Immigration Rules.

Applications for leave to remain as a stateless person will normally be decided and the decision communicated to the applicant before removal arrangements are made. However, an application on the basis of statelessness is not a barrier to removal where someone does not have extant leave in any other capacity and an Emergency Travel Document (ETD) has been arranged. If an ETD has been secured or a passport used to arrange to remove the individual, then this can be accepted as evidence that they are re-admissible for the purpose of permanent residence.

The decision letter (and all other correspondence with the applicant) must be served in accordance with the guidance on Drafting, serving and implementing decisions.

6.3 Further submissions and repeat applications

There is no provision within Part 14 of the Immigration Rules to accept further submissions on a statelessness decision. Where an applicant has been refused and has been notified of the decision, any further information or evidence must be submitted as part of a new application using the appropriate FLR(S) application form available on the GOV.UK website.

6.4 Family members

As part of the consideration of the application, caseworkers must consider any explanations provided by the applicant as to why they cannot seek entry for the purpose of residence to the State that their family member (for example, a spouse) is from.

Paragraphs 410 to 411 of the Immigration Rules set out the requirements for limited leave as the family member of a stateless person. Paragraph 412 sets out when a family member will be refused or where leave will be curtailed. Paragraphs 415 to 416 set out the criteria for the grant or refusal of indefinite leave to remain for family members. Where an individual is granted leave to remain as a stateless person, family members will be granted leave to remain in line. This does not mean that the family members will be recognised as stateless, only that the amount of leave they are granted will be the same as the stateless person.

6.5 Administrative reviews

There is no statutory right of appeal against the decision to refuse to grant leave as a stateless person but unsuccessful applicants can apply for an administrative review, in accordance with [paragraph AR2.3\(c\) of Appendix AR of the Immigration Rules](#).

Applicants will be advised in the decision letter that they are entitled to apply for an administrative review which must be made online using the form at: [Apply for an administrative review](#). There is a fee which is refunded if the outcome of the review is that leave should be granted. There is provision to apply for a fee waiver in exceptional circumstances. Applications for a fee waiver are considered on a case by case basis as part of the validation process. See [administrative review guidance](#) for details.

An administrative review will then consider whether an 'eligible decision' is wrong because of a case working error and correct that error if necessary.

Related content

[Contents](#)

Section 7: travel documents

People who are recognised as stateless and given leave to remain in accordance with this policy are entitled to apply for a Travel Document which will be issued in accordance with the UK's obligations under the 1954 Convention. Applications for a Stateless person travel document must be made using form TD112 (BRP). The Biometric Residence Permit (BRP) is the only evidence of valid leave in the UK and should be provided along with the travel document application. Further information on [applying for a Home Office travel document](#) is available on GOV.UK.

Related content

[Contents](#)