



Home Office

Stateless leave

Version 3.0

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About this guidance

This guidance is for all staff dealing with applications for leave to remain in the UK on the basis of statelessness. It explains the policy, process and procedure which must be followed when considering such applications under [part 14, paragraphs 401 to 416](#) of the Immigration Rules.

Contacts

If you have any questions about this guidance and your line manager or senior caseworker cannot help you or you think that the guidance has factual errors then 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.

Publication

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

- Version **3.0**
- published for Home Office staff on **30 October 2019**

Changes from last version of this guidance

Updated to reflect changes to the Immigration Rules, which came into effect on 6 April 2019:

- a change to the duration of limited leave granted to those who qualify for stateless leave from 30 months to 5 years
- further clarification on the requirement for applicants to show that they cannot acquire a nationality or a right to permanent residence in another country to which they could reasonably expect to be entitled

Further updates:

- updated section on how to consider applications for further leave to remain and indefinite leave to remain on the stateless leave route
- further guidance on interviewing stateless leave applicants
- a change in the process to follow when an applicant has an outstanding asylum claim
- updated in line with current drafting requirements

Related content

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Introduction

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

- the definition of statelessness
- evidence gathering and how to consider applications, including in respect of dependants
- applying exclusion provisions and general grounds for refusal when considering stateless leave applications

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 several 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 in their country of habitual residence, 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 allow stateless persons to be formally determined as stateless and granted leave to remain where they have no other right to remain under the rules but cannot leave voluntarily or be removed from the UK because they have no right of permanent residence in their country of former habitual residence or in any other country.

The guidance in this instruction is drawn from the UNHCR guidelines, 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.

Policy intention

The underlying policy objectives in providing a route for stateless persons and in considering applications are to:

- provide a means for considering if someone is stateless and assist those unable to return to their country of former habitual residence because they are stateless and have no right of residence there, to ensure we comply with our obligations under the UN Stateless Conventions
- provide a means for stateless persons in the UK who cannot obtain admission to any other country for the purposes of permanent residence, to access their basic human rights by granting them leave to remain in the UK as part of our efforts to address wider global issues facing stateless persons
- tackle abuse from those who are not stateless but make an application in an attempt to frustrate legitimate removal action and ensure that criminals and those who are a threat to our security do not benefit from generous stateless leave

Application in respect of children

Section 55 of the Borders, Citizenship and Immigration Act 2009 requires the Home Office to carry out its functions in a way that considers the need to safeguard and promote the welfare of children in the UK. You must not apply this guidance either to children or to those with children without considering the individual circumstances of the case and the impact of your actions on children. You must follow the principles set out in the statutory guidance [every child matters – change for children](#).

The statutory duty to children includes the need to demonstrate that applications are dealt with in a timely and sensitive way 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 main applicant, 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 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 provision of appropriately trained caseworkers. It also requires you to assist in the determination of statelessness by making enquiries with relevant national authorities, which the child may not be in a position to undertake themselves.

Considering the welfare and best interests of a child also applies where a child is included as a dependant on a stateless leave application. Whether or not parents or

children are stateless or have the right to reside in another country will be 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 they qualify under stateless leave provisions will depend on whether they are admissible to another country for purposes of permanent residence there.

For children born in the UK to be considered stateless, evidence must be provided to show they, or their parents, have made a genuine attempt to register their birth with the relevant authorities but have been refused for reasons beyond their control. In [R \(JM \(Zimbabwe\)\) v SSHD \(2018\)](#), the Court of Appeal confirmed that a child, born in the UK of a foreign national, who can under the law of the parent's nationality, obtain citizenship of that country by descent by registering their birth, can properly be regarded as admissible to that country, as set out at paragraph 403(c) of HC 395.

In any case where you are concerned about child welfare or protection issues that may involve safeguarding issues within the family unit you must immediately contact the local safeguarding team, who will refer the case to the relevant local authority in accordance with guidance in making safeguarding referrals. In an emergency, you must refer the case to the police. You can ask the Office of the Children's Champion for advice on issues relating to children, including family court proceedings and complex cases.

Modern Slavery

Modern slavery encompasses human trafficking and slavery, servitude and forced labour. The essence of human trafficking is that the victim is deceived into a situation where they are exploited. UN Convention number 29 concerning forced or compulsory labour defines 'forced or compulsory labour' as 'all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily'.

UNHCR research suggests there may be a link between statelessness and human trafficking, whereby a stateless person is at greater risk of becoming a victim of human trafficking because it increases risk factors such as poverty, lack of education and the ability to deal with a sudden crisis. A combination of risk factors may push stateless people to decide to migrate and take risks to find a solution to their plight. You should be aware of the nexus between modern slavery and statelessness, to ensure that you take the necessary action in cases where you identify an applicant who you believe may have experienced modern slavery.

For further guidance on dealing with possible victims of modern slavery, including how to refer someone to the National Referral Mechanism (NRM), see the Frontline Staff guidance. For more guidance on modern slavery, including human trafficking see the Competent Authority guidance.

Related content

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Relevant legislation

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.

The Immigration Rules

[Paragraphs 401 to 416](#) in Part 14 of the Immigration Rules provide the procedural and policy framework for considering stateless leave applications. These rules were introduced in 2013 by the [statement of changes to the Immigration Rules: HC1039](#).

[Paragraph 405](#), as amended on 6 April 2019 by the [statement of changes to the Immigration Rules: HC1919](#), provides for an initial grant of 5 years' limited leave to those who qualify under Part 14 of the Rules.

Applications for stateless leave under Paragraphs 401 to 416 must be made on the relevant [specified application form](#) on the gov.uk 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 Immigration Rules sets out the general grounds for refusing an application. These grounds apply to stateless leave applications.

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Initial procedures

Application process and admissibility

All applications must be made on the specified online 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, email or on the old paper form, will be invalid and not considered. Forms may be updated so applicants must use the latest version available online when they apply.

[Paragraph 34BB](#) of the Immigration Rules makes clear that an applicant may only have one outstanding application for leave to remain at a time. If a new application for leave is made while a previous application is still outstanding, it will be considered as a variation of the previous application. However, for instructions on how to consider stateless leave applications where applicants have outstanding protection claims, please see the sections on [Outstanding asylum claims or further submissions](#) in this guidance.

Claims that are based on a need for protection from persecution or serious harm should not be made by way of a stateless leave application. Those who wish to claim asylum must make an appointment with the [Asylum Intake Unit](#). Failed asylum seekers wishing to lodge further submissions must do so in person in accordance with the published Further Submissions policy.

Those previously granted leave to remain in another capacity who wish to apply for stateless leave should make an application up to 28 days before their existing leave expires. Whilst an application can be submitted earlier, such applications will be held until 28 days before their leave expires before being considered. This is to ensure applications from those who do not have extant leave are given priority.

Outstanding asylum claims or further submissions

If an asylum seeker whose asylum claim remains outstanding makes a stateless leave application, you must first write to the applicant to explain why it may not be appropriate to consider their stateless application before their asylum claim is decided and ask whether they wish to withdraw their asylum claim. You will need to make clear that if they approach relevant national authorities to support their stateless application this may prejudice any future asylum claim based on fear of persecution from those authorities.

If no reply is received or the applicant confirms they wish to pursue both their asylum claim and stateless application, you must consider if you can make a decision on whether they qualify for stateless leave without making enquiries with the national authorities from which the claimant is seeking protection, if doing so would breach our duty of confidentiality in respect of asylum claims under [paragraph 339IA](#) of the Immigration Rules.

Where you can determine the stateless leave application without contacting the national authorities, or the person's asylum claim is not based on a fear of those authorities such that any enquiries would not breach our duty of confidentiality, the asylum and stateless procedures may proceed in parallel. However, you must consult relevant operational colleagues considering the asylum claim as findings of fact from one procedure may be relevant in the other.

In cases where enquiries with relevant national authorities are required to make an informed decision on stateless matters, and the applicant's asylum claim is based on a fear of those authorities, this will mean that enquiries cannot be made unless and until the asylum claim has been refused (and appeal rights exhausted). This is because approaching the national authorities would breach our obligation to treat information provided in support of their asylum claim in confidence. Where an asylum claim has been refused, any necessary enquiries subsequently made to the relevant national authorities should not disclose the fact that an asylum claim was lodged. As such, you must place the stateless application on hold until the asylum claim has been decided or withdrawn. You must write to the applicant to tell them their application has been placed on hold and the reasons why.

The same principles apply to any further submissions lodged on protection grounds, if they are based on a fear of persecution from the national authorities of their country of origin or former habitual residence.

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 stateless leave application. 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 the refusal of asylum. Evidence of credibility from previous asylum claims can also be drawn upon for the statelessness determination. However, you must not rely on any credibility findings that have subsequently been overturned on appeal.

You must also be mindful that asylum claims are considered, and findings made, based on the lower standard of proof, that of a reasonable degree of likelihood, whereas a person applying for stateless leave needs to demonstrate they qualify to the higher civil standard of a balance of probabilities.

Language analysis

Although language analysis cannot determine the nationality of an individual or whether they are stateless, it can provide evidence regarding linguistic origin, which may be useful evidence in cases where there is doubt as to their country or region of origin. Those refusing to participate in the language analysis process must be asked to explain why. Their response must be taken into account when considering their stateless leave application. More information, including the bases for carrying out language analysis, can be found in guidance on language analysis.

Removal to safe third countries

Where an asylum claim lodged in the UK is considered inadmissible in accordance with paragraphs 345A – 345D of the Immigration Rules, or the Secretary of State declines to substantively consider an asylum claim in accordance with paragraph 345E of the Immigration Rules, an application for Stateless leave is not a barrier to removal therefore any removal to a safe country should proceed. Any outstanding Stateless leave application will lapse if the applicant is removed to a safe third country. For more information see the Inadmissibility guidance.

Dependants

Partners and dependent children, whether in the UK with the main applicant at the time of application or not, should, irrespective of their own nationality or lack of nationality, be included in the application form, along with details about their immigration history and countries of former residence that may be relevant to the application. This is because it will be necessary to consider whether the applicant may be admissible to their partner or child's country of nationality. See definition of statelessness – [applying the 'by any state' element](#). 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 partner or child wishes to be considered individually for stateless leave, they must 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 leave under stateless provisions, family members should normally be granted leave in line with the stateless person, providing they do not fall for refusal under general grounds.

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Stateless interviews

An interview may be required if you believe that the stateless leave application is lacking information needed to make an informed decision, which cannot be obtained through other means, for example, writing to or arranging a telephone call with the applicant's legal representatives. In other instances, questions about evidence submitted as part of the application may be resolved through additional written communications.

An interview will not be required where there is already sufficient evidence that an individual is stateless, is not admissible to any other country and is eligible for leave to remain on this basis. An interview will also not be required, and the application will be refused, where recent and reliable information including the applicant's previous evidence or findings of fact made by an immigration judge, have 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.

In cases where you consider an interview is required to gather further evidence on which to make an informed decision, the applicant should be invited to an interview by sending a letter (use template ASL.4754) to the applicant and representative (where relevant). If an applicant has a legal representative, then you should also send a covering letter (ASL.4753) to them. Letter templates are available on DocGen. You will then need to send a booking request to Liverpool Asylum Reception to book a room for the interview. If an interpreter is required, you will need to send an interpreter request sheet to interpreter requests (IOU).

Conducting Stateless Interviews

Paragraph 100 of the [UNHCR Handbook on Protection of Stateless Persons](#) sets out how interviews should be approached. An interview provides an opportunity for the applicant to fully set out their case, present relevant supporting evidence and answer questions about key issues that remain outstanding. You should ask open-ended questions to encourage applicants to deliver as full an account as possible. You must bear in mind that applicants can only be expected to reply to the best of their knowledge and in some cases even basic information may not necessarily be known, for example, their place of birth or whether their birth was registered.

During the interview, you must establish what steps the applicant has taken to obtain relevant documentation, including details of any enquiries with relevant authorities in the country of origin or habitual residence or through contact with embassies or high commissions in the UK. The interview should also be used to put any inconsistencies to the applicant, to give them the opportunity to explain so that you can make an informed decision on whether to accept their account on the balance of probabilities.

The burden of proof is on the applicant to prove they are stateless and have taken reasonable steps to facilitate admission to their country of former habitual residence or any other country but have been unable to secure the right of admission and attempted to re-establish their nationality with the relevant authorities. However, you should consider whether officials are more likely to receive a response, particularly if

the state has previously demonstrated their cooperation with the Home Office. As such, whilst you will need to explore the extent to which the applicant has tried to obtain evidence during interview, you must consider liaising directly with relevant authorities where the information available (from the application and interview) is not determinative.

Those who refer in correspondence or at interview to a fear of return to their 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](https://www.gov.uk) website.

In cases where an interview has been arranged and the applicant fails to attend 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](#).

For further guidance on the broad principles and standards on conducting interviews, you can refer to the published policy on asylum interviews.

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Statelessness and admissibility

Definition

Article 1(1) of the [1954 UN Stateless Convention](#) defines a stateless person, for the purpose of the Convention, as 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 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. The definition is reflected in [paragraph 401\(a\)](#) of the Immigration Rules.

Burden and standard of proof

In all cases, the burden of proof rests with the applicant, who is expected to co-operate with you to provide sufficient evidence to demonstrate that they are stateless and that there is no country to which they can be removed for purposes of permanent residence. The standard of proof that applies in considering stateless leave is that of a balance of probabilities, as confirmed by the Court of Appeal in [AS \(Guinea\) v SSHD \[2018\] EWCA Civ 2234](#).

[Paragraph 403\(d\)](#) of the Immigration Rules requires applicants to obtain and submit all reasonably available evidence to enable the Secretary of State to determine that they are stateless and are not admissible to another country under the meaning of paragraph 403(c). It is not enough, for example, for the applicant to rely on an unsupported assertion of statelessness or provide no explanation or evidence to support their application, particularly where this runs contrary to previously available information. Paragraphs 403 (e) and (f) require applicants to evidence that they have sought and failed to obtain or re-establish their nationality with the appropriate authorities of the relevant country. This includes parents taking the required steps to register their child's birth with the relevant authorities. Applicants are expected to make enquiries with relevant national authorities unless there is a very good reason not to, or with friends or relatives who may be able to assist and should provide information about their endeavours in their application, subsequent correspondence or during the interview.

However, you must make a distinction between applicants who show no interest in genuinely co-operating or providing supporting information, such as evidence of their attempts to obtain or re-establish their nationality with the relevant authorities, 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 nationality laws of a given state. In such circumstances, where the available information is lacking or inconclusive, you must assist the applicant by interviewing them to elicit further evidence, undertaking relevant research and, if necessary, making enquiries directly with the relevant authorities and organisations. See [gathering and assessing evidence below](#).

The applicant is required to establish that they are 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.

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 or as part of previous applications or claims
- evidence about the law and practice in the country in question, both regarding the individual concerned, and the group (or groups) of individuals to which the applicant belongs

You may need to make further enquiries as part of the consideration process. This may be undertaken before or after any interview has taken place. If an interview is considered necessary you should make relevant enquiries when preparing for the interview where possible, so that you are able to ask questions of the applicant on matters arising following those enquiries.

Documentary and testimonial evidence

Evidence documenting an applicant's personal history can help identify the state (or states) whose nationality laws and procedures need to be considered to determine 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 relevant foreign authorities to an enquiry regarding nationality status of an individual
- identity documents (for example, birth certificate, extract from civil register, national identity card, voter registration document), passports (see [passports](#) 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)
- 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

You 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 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 you to undertake your own further research to assist the applicant.

Country of origin information (COI)

You 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 through 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 carefully considered and evidence corroborated from other sources where possible. Any COI gathered through independent research must be fed back to CPIT.

Passports

Apparently genuine, unexpired passports will usually raise a presumption that the passport holder is a national of the country that issued the passport and is entitled to reside there unless there is evidence from 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 you should consider checking with national authorities to confirm whether a passport has been genuinely and correctly issued where it is alleged otherwise.

Enquiries with relevant national authorities

Enquiries of the authorities of the country of former habitual residence which disclose the applicant's personal details will be necessary in some cases to make an informed decision. Such details may be disclosed through the applicant approaching relevant authorities or any enquiries that you make directly. For example, this may be for the purposes of verifying information which the applicant has provided in

support of an application. Such requests may include seeking to verify documents, information, or identity with private and public authorities in the UK and other countries. When making enquiries with foreign national authorities, there must be no disclosure of the rejection of any previous asylum claim, if applicable. Also, see section on [outstanding asylum claims or further submissions](#).

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, you must 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, you 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 false representations and may lead to a refusal of the application for stateless leave.

Assessing evidence

An individual's nationality must be assessed as a matter of fact and law at the time the stateless leave application is determined. The question as to whether a person is stateless is not a historic or predictive exercise. You must consider whether at the point of making your decision, 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 the stateless application is determined, they cannot be considered a national for the purposes of Article 1(1) of the 1954 Convention. You must 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 they are inadmissible to any other country, particularly where they have the means to obtain a nationality to which they can reasonably expect to be entitled. In [R \(JM \(Zimbabwe\)\) v SSHD \(2018\)](#) the Court of Appeal considered the correct approach to admissibility and held that, if it lies within an applicant's power to obtain admission, for example, through registration of a person's birth which would confer citizenship, then, absent any evidence to the contrary, the applicant is admissible..

The changes introduced by the [statement of changes to the Immigration Rules HC\[1919\]](#), which came into effect on 6 April 2019, make clear that applicants are required to take reasonable steps to facilitate admission to their country of former habitual residence or any other country in which they could reasonably expect to have a right of permanent residence, and that the applicant must obtain and submit all reasonably available evidence to enable the Secretary of State to determine whether they are stateless and whether they are admissible to another country within the meaning of paragraph 403(c).

Stateless definition

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). See [existing protection arrangements](#).

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' is 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.

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 whether a person is stateless. You must refer to relevant published COI, consider whether a request should be made to CPIT and, where appropriate, to the FCO, where further information is required to make an informed decision.

Determining nationality under operation of state laws

The law and practice of determining 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. However, it is important that you do not apply provisions of foreign law selectively or in isolation from other relevant law or practices because you need to make a decision based on all the evidence available.

You will need to assess the evidence provided in the application to consider the way in which statelessness may have arisen. An understanding of the particular circumstances of the case will assist in making appropriate enquiries with relevant national authorities and in reaching an informed decision. A person may be stateless, or become stateless, because they have:

- never held a nationality and have always been stateless

- acquired and subsequently lost a nationality
- been denied a nationality by the national authorities of their country of former habitual residence despite providing evidence
- voluntarily renounced a nationality
- not registered for a nationality to which they are entitled having been born outside the country of their parents' nationality
- genuinely been unable to provide evidence that they are a national of their country of former habitual residence

Those not considered as nationals under state law and practice

Establishing whether an individual is not considered 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. 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 always follow the letter of the law.

The question to be answered is whether, at the point of decision, an individual is a national of the country in question. This also applies where an individual provides evidence that they have made an application to the national authority only to find more and more evidence is 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.

Acquiring nationality

In most countries, nationality is acquired automatically by birth on the territory or by 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. Where the applicant claims that the necessary action was not taken and therefore nationality was not acquired, you 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.

Where a person could acquire a nationality by registering with the relevant national authorities but they have not taken the necessary steps to apply, they may be stateless but will not qualify for stateless leave under [paragraph 403\(c\)](#) and (f).

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 and has made a genuine attempt to acquire nationality

It is the position of the national authorities rather than the letter of the law that is likely to be decisive in concluding that the 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.

Where there are difficulties in obtaining relevant travel documents to facilitate removal this does not, in itself, mean that the applicant is stateless or inadmissible to the country of return.

Absence of evidence of the national authorities' position

There may be cases where an individual has never come into contact with state 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 way, 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. You must not assume or accept this without further inquiry.

Response to enquiries with overseas governments

Enquiries 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 you. It is a matter for judgement in the individual case as to how long it is reasonable to wait for any response. Wherever possible, you must progress the case to conclusion within a reasonable timeframe and where a response is not received for a protracted period you may decide the case without waiting for a response, particularly if the state's representatives have a general policy or practice of never replying to such requests. However, you must chase up outstanding requests on a regular basis and liaise with returns logistics, who may be able to assist in pressing relevant national authorities for a response. You 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 evident that the authority has not examined the particular circumstances of an individual's position, you should attach little weight to that response in considering the application.

Voluntary renunciation of nationality

Voluntary renunciation occurs when an individual gives up their 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 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 or other leave 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 whether a person meets the stateless definition 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 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 must be refused.

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 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, 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.

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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.

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 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 on asylum claims by persons from the Occupied Palestinian Territories.

Habitual residence cases

Paragraph 402(b) of the Immigration Rules reflects Article 1(2)(ii) of the Stateless 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 to be excluded under Article 1(2)(ii).

This reflects provisions in Article 1E of the Refugee Convention and means that an individual will not qualify for leave to remain as a stateless person where they have:

- secure residence in the country with respect to which the application of Article 1(2)(ii) is being examined
- been recognised by the competent authorities of that country as having the rights and obligations attached to possession of nationality of that country

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 possession of nationality relevant to the interpretation of Article 1(2)(ii). This 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.

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 guidance on Exclusion under Article 1F and Article 33(2) of the Refugee Convention.

The burden of proving that an individual falls within these provisions lies with the Secretary of State, and you 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 requires you to weigh up all the evidence and come to a reasoned conclusion – 'considering' goes further than simply 'suspecting' or 'believing'.

Danger to security or public order

Paragraph 404 (b) permits the refusal of stateless leave where there are 'reasonable grounds' for considering that an 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 [Paragraph 334\(iii\) and 339D\(iii\)](#) of the Immigration Rules. 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 strong, clear and credible evidence must be present.

General grounds for refusal

The general grounds for refusal (GGfR) set out in paragraph 322 of [part 9 of the Immigration Rules](#) apply to the consideration of stateless leave applications. Where an individual falls for refusal under the general grounds the application may be refused. However, you must still consider whether an applicant meets the definition of a stateless person under Paragraph 401. This is because those refused under general grounds who are stateless and not admissible to any other country cannot be removed, because there is nowhere to remove them to, and as such may fall for a grant of leave outside the Immigration Rules.

Paragraph 404 (c) permits the refusal of an application if any of the grounds set out in paragraph 322 apply. Where an application falls for refusal under paragraph 403 as well as the GGfR, you should refer to all reasons for refusal in your decision.

Further details on applying the GGfR can be found in the General Grounds for Refusal guidance.

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Deciding Applications

Granting leave to remain

[Paragraph 403](#) of the Immigration Rules sets out the requirements that must be met for a grant of stateless leave. Limited leave to remain will be granted where the person meets the requirements of paragraph 403 and does not fall within the provisions of paragraph 404(b) or (c).

Leave to remain as a stateless person (or their family member) is granted in accordance with paragraphs 405 and 413 of the Immigration Rules, which states that leave will normally be granted to the applicant and their family members (as defined in paragraph 410) for an initial period of no more than 5 years. Those granted leave to remain have the right to work and access to public funds.

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 for refusal 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), (e) or (f) of the Immigration Rules, because they are admissible or have not taken reasonable steps to facilitate admission to their country of former habitual residence or any other country, the decision letter must clearly indicate whether they are nevertheless recognised as stateless in accordance with paragraph 401 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, a stateless leave application is not a barrier to removal where someone does not have extant leave in any other capacity and an Emergency Travel Document (ETD) is available. 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 to the country of return. If this is the case, a decision letter should be drafted, to formally refuse the stateless leave application, citing that the ETD is one piece of evidence which shows that the applicant is admissible.

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

Further submissions and repeat applications

There is no provision within Part 14 of the Immigration Rules to accept further submissions following a decision on a stateless leave application. 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.

Family members

When considering the application, you 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 partner) 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, provided they meet the requirements of the Immigration Rules. This does not mean that the family members will be recognised as stateless, only that the amount of leave they are granted will be for the same duration as the stateless person.

Administrative reviews

There is no statutory right of appeal against a decision to refuse to grant stateless leave but unsuccessful applicants can apply for an administrative review, in accordance with [paragraph AR3.2\(c\) of Appendix AR](#) of the Immigration Rules.

Applicants must 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 no fee payable for this review because there is no fee for the underlying stateless leave application. See administrative review guidance for further details.

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

If a case returns from administrative review for reconsideration, a different caseworker should reconsider the case within 3 months and any decision will be subject to a second pair of eyes check by a Higher Executive Officer or Senior Executive Officer.

Further leave applications

Applications for further leave for applicants who have previously been granted 30 months limited leave to remain as a stateless person, prior to the rule changes of April 2019, should be considered in line with the requirements for limited leave as a stateless person under Paragraph 403 of the Immigration Rules. Such applications must be considered in line with the principles set out in the [assessing statelessness and admissibility](#) section of this guidance.

You should also consider whether the exclusion provisions set out in Paragraph 402 and the General Grounds for Refusal in Paragraph 322 apply. If they do, but you still

consider the individual to be stateless and not admissible to any other country, you should look to grant leave outside the rules instead.

For those applicants who continue to meet the requirements under Paragraph 403, you should grant a period of 5 years limited leave to remain. However, you should advise in your grant letter that they are eligible to apply for settlement as a stateless person after having accrued a continuous period of 5 years limited leave on the stateless leave route.

Settlement applications

Applications for settlement (also referred to as indefinite leave to remain) as a stateless person must be made on the specified FLR(S) at: <https://www.gov.uk/stay-in-uk-stateless>. Where an applicant has previously provided evidence to support that they are stateless and not admissible to any other country, there is no need for them to repeat this evidence within their settlement application.

Applications must not be processed until one month before the applicant becomes eligible for settlement (based on the need to have a continuous period of 5 years' limited leave as a stateless person). Any applications received more than a month, but less than 3 months, before the applicant is eligible, should be held until a month before the date they become eligible and then processed. The file must be noted accordingly.

Applications received more than 3 months before the applicant becomes eligible for settlement should be refused. You should advise the individual that they do not qualify for settlement at this time because they have not accrued a continuous period of 5 years' limited leave as a stateless person and that they should apply again when their leave is due to expire within a month or when they have accrued 5 years' limited leave to remain.

Settlement may be granted under [paragraph 408](#) of the Immigration Rules after the applicant has spent a continuous period of five years in the UK with stateless leave granted under paragraph 405. To qualify for settlement, an applicant must meet the requirements set out in paragraph 407 of the Immigration Rules and not fall for refusal under paragraph 409.

Where clear evidence comes to light that the individual is not stateless and/or is admissible to another country for the purpose of permanent residence, you must refuse the settlement application under [paragraph 407\(d\)](#). The individual will then need to make a valid application for leave under other provisions of the Immigration Rules or leave the UK. You must refer such cases to the relevant enforcement team to consider whether removal action is appropriate.

Applicants who apply for settlement as a stateless person but have never been granted leave to remain on the stateless leave route must be refused settlement on this route as they don't meet the requirements of paragraph 407 of the Rules.

Where an application is refused because they do not meet the requirements of the rules but leave to remain is granted outside the Immigration Rules there is a right of administrative review.

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Travel Documents

People who are recognised as stateless and granted leave to remain in accordance with this policy are entitled to apply for a Stateless Persons Document which will be issued in accordance with the UK's obligations under the 1954 UN Statelessness Convention.

Stateless Persons Documents may also be issued to those who are recognised as being stateless, but do not qualify for stateless leave. For example, this may include those who are refused under general grounds for refusal but who are granted leave outside the Immigration Rules.

Applications for a Stateless Person's Document must be made online. The Biometric Residence Permit (BRP) is the only evidence of valid leave in the UK and a photocopy of the BRP should be provided along with the travel document application supporting documents.

Further information on [applying for a Home Office travel document](#) is available on the GOV.UK website.

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