

Law of Ukraine on Amending Certain Legislative Acts of Ukraine regarding Recognition as a Stateless Person

Verkhovna Rada rules that:

I. The following legislative acts of Ukraine should be amended:

1. The Code of Administrative Proceedings of Ukraine

Article 289. Peculiarities of administrative proceedings in cases involving the detention of foreigners or stateless persons

1. In case if there are substantial grounds to assume that a foreigner or a stateless person in respect of whom an administrative expulsion lawsuit has been filed to the court will attempt to evade the expulsion, create obstacles to the expulsion or readmission (in accordance to Ukraine's international treaties on readmission), if there is a risk of his/her escape and if a foreigner/stateless person having committed a violation of Ukrainian legislation on border issues or on legal status of foreign citizens does not have a valid document for leaving Ukraine, State Migration Service, State Border Guard Service or State Security Service files a request to the local court in its location or location of a respective temporary accommodation centre. In their lawsuits they may request one of the following measures:

1) detention of a foreign citizen or a stateless person with the purpose of his/her identification and (or) ensuring his/her expulsion from the territory of Ukraine;

2) detention of a foreign citizen or a stateless person with the purpose of his/her transfer in accordance with an international treaty of Ukraine on readmission;

3) for a company, enterprise or organization to stand bail for him/her;

4) for such a person to pay bail for himself/herself.

2. The measures defined in this article are also applied by the administrative court defined in paragraph 1 of the article at the request of the central executive body responsible for implementing State policy on migration (hereinafter – the State Migration Service or SMS), its territorial bodies or subdivisions, the State border security agencies or the Security Service of Ukraine. They may be applied in respect of foreigners and stateless persons having committed a violation of border regime or rules on foreigners' legal stay in Ukraine prior to a decision is taken on their refugee status, subsidiary protection **or statelessness status**.

<...>

2. The Law of Ukraine on Immigration

Article 4. Immigration quota

<...>

Permission for immigration beyond the quota shall be provided to:

6) stateless persons, which have resided in the territory of Ukraine for two years on the basis of a temporary residence permit since the date of their recognition as stateless persons;

Article 9. Submission of an application for immigration permit

<...>

The requirement of paragraph 5 (providing medical certificates on absence of chronic alcoholism, toxicomania, drug dependence or infectious diseases) does not apply to persons referred to in paragraphs 1 (a spouse, child or parent of a Ukrainian citizen), 3 (persons entitled to Ukrainian citizenship due to their territorial origin), 6 (stateless persons, which have resided in the territory of Ukraine for two years on the basis of a temporary residence permit since the date of their recognition as stateless persons) of part three of Article 4 of this Law.

<...>

In addition to the above documents the following documents shall be submitted:

14) for persons referred to in paragraph 6 of part three of Article 4 of this Law (stateless persons which have resided in the territory of Ukraine for two years on the basis of a temporary residence permit since the date of their recognition as stateless persons) - originals (returned after presenting) and copies of a temporary residence permit and a decision on granting the status of stateless person.

Persons permanently residing outside Ukraine, except for persons referred to in paragraphs 1, 3, 6 of part three of Article 4 of this Law, shall submit clear criminal record check along with an application for immigration permit.

3. The Law of Ukraine on Free Legal Aid

Article 14. Subjects of the right to free secondary legal aid

<...>

8¹) persons who filed an application for a status of a stateless person - for all kinds of legal services provided for by part two of Article 13 of this Law (secondary free legal aid) from the moment the person submits an application for recognition as a stateless person till final decision on the application;

4. The Law of Ukraine on Legal Status of Foreigners and Stateless Persons

Article 1. Definitions of terms

1. In this Law the terms are used in the following meaning:

<...>

15) a stateless person – a person, who is not considered as a national by any State under the operation of its law;

<...>

27) a temporary accommodation centre for foreigners and stateless persons unlawfully staying in Ukraine - state facility for temporary holding of foreigners and stateless persons:

<...>

detained under court's decision till completion of review of the application for a status of a refugee or person in need of subsidiary protection in Ukraine or a stateless person.

28) legal representatives of a child - parents, adoptive parents, parents-caregivers, guardians, custodians (including guardians and custodians appointed as such prior to arrival to Ukraine, or other full age person who prior to arrival to Ukraine voluntarily or by the custom of the country of origin took responsibility for fostering the child), representatives of the institutions that perform duties of guardians and custodians.

2. Term “an unaccompanied child” shall be used in the present Law in the meaning provided by the Law of Ukraine on Refugees and Persons in Need of Complementary or Temporary Protection in Ukraine¹.

Article 4. Grounds for stay of foreigners and stateless persons in the territory of Ukraine

<...>

14. Foreigners and stateless persons who arrived in Ukraine for the purpose of family reunification with persons who are citizens of Ukraine, or during their lawful stay in the territory of Ukraine in the cases referred to in parts three - thirteen of this Article entered into marriage with a citizen of Ukraine and obtained a temporary residence permit shall be considered as lawfully staying in the territory of Ukraine for the period until they are granted a permanent residence permit or Ukrainian citizenship.

<...>

¹ Unaccompanied child – a person below 18 years old who arrives or has arrived to the territory of Ukraine without being accompanied by parents or one of them, his/her grandparents, adult brother or sister, a guardian or custodian appointed to him/her in accordance with the legislation of the country of origin or other adult persons who prior to their arrival to Ukraine voluntarily or due to a custom in the country of origin have taken responsibility for upbringing the child (Article 1, part 1, para 2 of the Law of Ukraine on Refugees and Persons in need of Complementary or Temporary Protection in Ukraine)

22. Foreigners and stateless persons lawfully staying in the territory of Ukraine are obliged to have a valid passport document. In case of loss or exchange of a passport document a foreigner or a stateless person within three working days should notify in writing the State Migration Service.

A person who is unable to obtain a passport document due to the fact that none of the States considers him/her as its national under the operation of its law, has a right to file an application for recognition as a stateless person to the State Migration Service regardless of lawfulness or unlawfulness of his/her stay in the territory of Ukraine.

23. Persons have been recognized as stateless persons under the procedure set out by this Law and who have obtained a temporary residence permit are considered to be lawful temporary residents in the territory of Ukraine for the period until they are granted a permanent residence permit or Ukrainian citizenship.

Article 5. Permanent residence permit and temporary residence permit

<...>

19. In the case provided for in part twenty two of Article 4 of this Law the ground for issuance of a temporary residence permit shall be an application of a recognized stateless person, copy of a decision on being recognized as a stateless person issued by the State Migration Service, and a written undertaking to inform the State Migration Service about acquiring citizenship of any other State within 30 days from such acquiring.

20. State authorities shall not require any other documents or information which is not determined by legislation from foreigners or stateless persons, their family members, employers and other persons in order to issue a permanent residence permit and a temporary residence permit.

21. Technical description, samples of forms for a permanent residence permit and a temporary residence permit, formalization, issuance, exchange, cancellation, forwarding, withdrawal, return to the State, recognition as invalid and destruction of a permanent residence permit and a temporary residence permit shall be carried out under the procedure set out by the Cabinet of Ministers of Ukraine.

Article 6¹. Recognition as a stateless person

1. An application for recognition as a stateless person shall be submitted by a person of full age and with a full legal capacity to the State Migration Service.

Information on a child shall be provided in the application of one of his/her legal representatives. An application for recognition of an unaccompanied child as a stateless person shall be submitted by one of his/her legal representatives. An application for recognition of a legally incapable person as a stateless person shall be submitted by his/her legal representative, which is duly recorded in the application by an authorized person of the State Migration Service. If the applicant himself/herself is not able to draw up an application for recognition as a stateless person due to illiteracy or physical disabilities, an application, upon his/her request, shall be drawn up by an authorized person of the State Migration Service which is duly recorded in the application.

An identity document or a document granting entry or exit from the State issued by a foreign State (if any), a document certifying the fact of non-belonging to other State's citizenship (if any), or any other document that can prove information provided in the application shall be submitted together with the application. In case the applicant for recognition as a stateless person does not have any of the above documents, upon his/her written consent, authorized person of the State Migration Service conducts interviews with family members, neighbours or any other persons (not less than three) who are able to confirm information provided in the application.

The applicant has a right to an interview with an authorized representative of the State Migration Service.

The applicant must cooperate with the State Migration Service, must attend interviews, provide evidence for recognition as a stateless person.

In case if the applicant does not understand the Ukrainian language, the State Migration Service shall provide him/her with an interpreter from the language that the applicant understands as well as written translation of his/her documents free of charge.

When submitting an application for recognition as a stateless person an applicant shall provide his/her biometric data for a record.

2. Decision on recognition or refusal in recognition as a stateless person shall be made the State Migration Service on the basis of all available information and documents within a six-month period since the moment of submitting an application for recognition as a stateless person. The period of application review can be extended up to twelve months by authorized person of the State Migration Service.

When reviewing an application, the State Migration Service shall undertake the necessary steps to gather information from the place of applicant's birth, countries or places of his/her previous permanent or long term residence and from the country of citizenship of his/her family members.

During an application review period, the applicant shall be considered to be lawfully temporarily staying in the territory of Ukraine. To confirm this the person shall be provided with a certificate of a standard form that confirms submitting of an application for recognition as a stateless person.

If any circumstances envisaged by requirements of the Law of Ukraine on Refugees and Persons in Need of Complementary or Temporary Protection arise during the procedure of recognition as a stateless person review of the application shall be suspended until the completion of a review of the application for recognition as a refugee or a person in need of complementary protection. Depending on the outcomes of review of the application for recognition as a refugee or a person in need of complementary protection, review of the application on recognition as a stateless person shall be renewed or ceased.

If any circumstances demonstrating the applicant's eligibility for the Ukrainian citizenship as per the Law of Ukraine on Citizenship of Ukraine arise during the procedure of recognition as a stateless person, review of the application on recognition as stateless person shall be suspended

until completion of verification of belonging to the Ukrainian citizenship. Depending on the outcomes of such verification the review of the application on recognition as a stateless person shall be renewed or ceased.

3. Decision on refusal in recognition as a stateless person shall be made by the State Migration Service in the following cases:

if the applicant is a citizen of Ukraine or another State, provided that his/her citizenship was recognized by the competent authority of this State and the applicant was documented according to this State's legislation;

if the applicant knowingly submitted invalid (except for documents which became invalid due to their expiration), forged documents or provided untruthful information in regard to the circumstances that have impact on determination of the status;

if the applicant had committed a crime against peace, war crime or a crime against humanity as defined in international acts developed with a view to prevent such crimes or committed a serious non-political crime outside the country of his/her residence prior to his/her admission to this country or is guilty in commission of acts contrary to the purposes and principles of the United Nations.

The State Migration Service shall forward the notification on rejection in recognition as a stateless person including grounds for the refusal provided by this Law and clarification of the appeal procedure to the applicant or his/her legal representative within three working days after the adoption of such decision.

4. The decision on refusal of recognition as a stateless person can be appealed by the applicant or his/her legal representative to the administrative court within twenty working days from the day of receiving notification on rejection in recognition as a stateless person.

In case the applicant exercised his/her right to appeal, the State Migration Service shall extend his/her certificate on application for recognition as a stateless person for the period until the final review of his/her application.

In case the applicant did not exercise his/her right to appeal, the State Migration Service shall withdraw from him/her the certificate on application for recognition as a stateless person, return to him/her originals of the documents, which were submitted with the application on recognition as a stateless person (if any), and make a decision on voluntary or forcible return or on forcible expulsion.

5. The decision on recognition as a stateless person shall be cancelled in cases provided for in part three of this Article. The State Migration Service shall forward the notification on cancellation of the decision on recognition as a stateless person including grounds for cancellation under this Law and clarification of the appeal procedure to the applicant or his/her legal representative within three working days after such decision was made. The decision on cancellation of the decision on recognition as a stateless person can be appealed before the administrative court within twenty working days since the day of receiving the notification on cancellation of the decision on recognition as a stateless person by the applicant.

In case the person exercised his/her right to appeal the State Migration Service shall not withdraw his/her permit for temporary or permanent residence and stateless person's certificate for traveling abroad (if any) for the period until the final review of the cancellation decision.

In case the person did not exercise his/her right to appeal the State Migration Service shall withdraw his/her permit for temporary or permanent residence and stateless person's certificate for traveling abroad (if any) which had been obtained on the basis of the decision on recognition as a stateless person, and makes a decision on voluntary or forcible return or on forcible expulsion.

6. The State Migration Service shall keep records on persons who filed applications for recognition as a stateless person, in whose regard the decision on recognition or on refusal in recognition as a stateless person and on cancellation of the decision on recognition as a stateless person was made, and on stateless persons documented with permits for permanent or temporary residence and certificates of a stateless person for traveling abroad as per requirements of the Law of Ukraine on the Unified State Demographic Register and Documents Confirming Citizenship of Ukraine, Identifying a Person or his/her Special Status.

7. Review procedure for applications for recognition as a stateless person, samples of application for recognition as a stateless person, of the certificate on application for recognition as a stateless person shall be established by the Cabinet of Ministers of Ukraine.

Article 15. Documents for entry into and exit from Ukraine of foreigners and stateless persons

1. Entering Ukraine and departing from Ukraine is conducted:

<...>

by stateless persons permanently or temporarily residing in the territory of Ukraine - under stateless person's document for traveling abroad and permanent or temporary residence permit;

<...>

Article 19. Issuance of a stateless person's certificate for traveling abroad

1. A stateless person who permanently or temporarily resides in the territory of Ukraine but does not have a travel document shall be issued a stateless person's certificate for traveling abroad which is a document identifying stateless person when he/she is crossing the state border of Ukraine and staying abroad.

5. The Law of Ukraine on Employment of the Population

Article 42. Labour of foreign citizens and stateless persons in Ukraine

<...>

6. Without the employment permit envisaged by this article can be employed:

1) foreign citizens and stateless persons who permanently reside in Ukraine;

2) foreign citizens and stateless persons who were provided with a status of refugee or who received an immigration permit;

3) foreign citizens and stateless persons who were recognized as persons in need of complementary protection;

<...>

4¹) persons who were recognized as stateless persons by the State Migration Service;

<...>

10) foreign citizens and stateless persons who arrived to Ukraine in order to participate in implementation of foreign aid projects;

11) foreign citizens and stateless persons who arrived to Ukraine in order to conduct teaching and/or scientific activities in institutions of specialized pre-higher and higher education with the invitation from the latter;

12) other foreign citizens and stateless persons in cases provided by laws of Ukraine and international treaties.

Article 42¹. Grounds for obtaining employment permits for foreign citizens and stateless persons

1. Employer receives a permit to employ the following categories of people if it does not contradict to international treaties signed by Ukraine:

<...>

4) persons who have submitted applications for recognition as a stateless person and persons who submitted an appeal to a decision on rejection in recognition as a stateless person;

<...>

3. Employer may obtain an employment permit only on the condition of providing his worker with a salary not less than:

1) five minimum wages (approx. 760 USD equivalent as of 23 July 2020) – for foreign citizens and stateless persons – hired employees of public associations, charitable organizations and educational institutions, defined in Articles 34, 36, 37, 39, 41, 43, 48 of the Law of Ukraine "On Education";

2) ten minimum wages (approx. 1,520 USD equivalent as of 23 July 2020) - for all other categories of employees.

<...>

Article 42². List of documents required for obtaining/prolongation of employment permits for foreign citizens and stateless persons

<...>

2. In order to employ particular categories of foreign citizens and stateless persons employer should submit additional documents:

<...>

6) for persons who have submitted applications for recognition as a stateless person – copy of the certificate on application for recognition as a stateless person;

<...>

Article 42⁴. Payment for issuance/prolongation of employment permit for foreign citizens and stateless persons

1. The payment for issuance/prolongation of employment permit:

<...>

5) Issuance and prolongation of employment permits for persons with respect to whom the decision has been made to process the documents for recognition as a refugee or a person in need of complementary protection, as well as for persons who have submitted applications for recognition as a stateless person and persons who submitted an appeal to a decision on refusal of recognition as a stateless person – free of charge.

Article 42¹⁰. Cancellation of employment permits for foreign citizens and stateless persons

1. Employer must file an application on cancellation of an employment permit to the State Employment Service if:

<...>

3) the State Migration Service has recognised a person to be a refugee, a person in need of complementary protection or a stateless person;

<...>

2. The State Employment Service withdraws previously granted employment permit in case if:

7) a person did not exercise his/her right to appeal the State Migration Service decision on rejection in recognition as a refugee, a person in need of complementary protection or a stateless person, or if a final negative decision on recognition was issued in respect of such person.

6. The Law of Ukraine on the Unified State Demographic Register and Documents Confirming Citizenship of Ukraine, Identifying a Person or his/her Special Status

Article 20. Administrative fee. Consular fee

<...>

4. ... Administrative fee is not applied to issuance of a refugee certificate, certificate of a person in need of complementary protection.

Administrative fee is not applied to issuance of a temporary and permanent residence permits for a person who has been recognized as a stateless person by the State Migration Service in accordance to Article 6¹ of the Law of Ukraine on the Legal Status of Foreigners and Stateless Persons.

<...>

Article 30. Certificate of a stateless person for traveling abroad

<...>

5. Certificate of a stateless person for traveling abroad may be issued for the duration of validity of his/her temporary or permanent residence permit.

II. Final provisions

1. This law comes into force from the day following the day of its publication. This law becomes operative in three months from the day of coming into force.

2. The Cabinet of Ministers of Ukraine should do the following in a three-months period after this law **came into force**:

bring its legislative acts in conformity with this law;
ensure bringing in conformity with this law acts of ministries and other central executive bodies by these respective bodies.

3. The Cabinet of Ministers of Ukraine should include information on implementation of this Law to their report on performance of the Cabinet's Action Programme in 2020.

President of Ukraine

V. Zelenskyi

Kyiv
16 June 2020
No. 693-IX