Applications for leave to remain as a stateless person

Date: 1st May 2013

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Document Control

Part 1: Introduction

1.1 Purpose of instruction and enquiries

This Instruction provides guidance on the new Immigration Rules which came into effect on 6 April 2013 on the consideration of applications for leave to remain as stateless persons.

Part 2 provides the background, overview and key points.

Part 3 provides guidance on the definition, evidence gathering, and assessment of applications to be considered stateless.

Part 4 provides guidance on the application of the exclusion paragraphs of Rule 403.

Part 5 provides guidance on the determination of the application, including the application of the grounds for refusal in Rule 404

Part 6 provides brief guidance on grants or refusals of leave to applicants and dependants

Part 7 provides information about the issue of travel documents to stateless persons

Annex A sets out the relevant Immigration Rules in full

Annex B sets out the provisions, in brief, of the 1954 and 1961 Statelessness Conventions.

Any enquiries about the application of this guidance should be directed to Operational Policy and Rules Unit.

1.2 Application of this guidance in respect of children and those with children

All the following sections in this guidance on those who may qualify for leave to remain as stateless persons should be considered taking into account the effect of the circumstances of each case as they would impact on children or on those with children.

Arising out of the UK's treaty obligations under the 1989 UN Convention on the Rights of the Child (UNCRC) and other international commitments, including the relevant EU Directives which require the best interests of the child to be a primary consideration for Member States when implementing the provisions involving minors, section 55 of the Borders, Citizenship and Immigration Act 2009 ('section 55') 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 having due regard to section 55. The instruction 'Every Child Matters - Change for Children' sets out the key principles to take into account in all cases.

The statutory duty to children includes the need to demonstrate that applications are dealt with in a timely and sensitive fashion where children are involved. In accordance with the UNCRC and the Supreme Court judgment in ZH (Tanzania) (FC) (Appellant) *v* SSHD, the best interests of the child are to be a primary consideration (although not necessarily the only consideration) when making decisions affecting children, whether

the child is the direct subject of the application, or whether 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 with respect to their nationality. Close attention should always be given to the welfare and best interests of the child when considering the nationality status and *po*tential need for statelessness protection of children. 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.

Part 2: Policy overview and points of procedure

2.1 Overview

- 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 conflicts of laws between states. The dissolution of the Soviet Union and the Yugoslav Federation in the early 1990's, for example, caused internal and external migration that is reported to have left hundreds of thousands stateless throughout Eastern Europe and Central Asia. In some countries, citizenship is lost automatically after prolonged residence in another country. The absence of proof of birth, origins or legal identity can also increase the risk of statelessness.

- Statelessness has been estimated to affect up to 12 million people worldwide. Possession of nationality is essential for full participation in society and a prerequisite for the enjoyment of the full range of human rights. Those who are stateless 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 may be detained because they are stateless; and they can be denied access to education and health services or blocked from obtaining employment.

- An underlying theme of most situations of statelessness is ethnic and racial discrimination that leads to exclusion. For example, groups such as the Muslim residents (Rohingya) of northern Rakhine state in Myanmar, some hill tribes in Thailand, the Bidoon in the Gulf States and various nomadic groups have been excluded from citizenship in the countries they have lived in for generations.

- Given the seriousness of the problem, the United Nations in 1954 adopted the Convention Relating to the Status of Stateless Persons. 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.

- A joint UNHCR/Asylum Aid report in November 2011 identified a small number of stateless people in the UK who could not be returned to any other country, and called on the UK to put beyond doubt the UK's compliance with the UN Statelessness Conventions of 1954 and 1961. In January 2012 the Home Secretary agreed to develop a new procedure by which stateless persons who have no other right to remain in the UK but cannot be removed, can be formally determined as stateless and granted leave to remain. This would address a potential gap in the UK's protection response, ensure visible compliance with international treaties and help deal positively with cases which might otherwise be incapable of satisfactory resolution.

- The guidance in this instruction is drawn extensively from the three sets of UNHCR guidelines, available on the UNHCR Refworld website, although it does not follow those guidelines in every respect. Where there are differences, this instruction must be applied.

- The new policy and procedure is primarily intended for those who do not qualify for refugee status or for Humanitarian Protection or any other form of leave under the Immigration Rules and who meet the 1954 Convention definition of a stateless person as "a person who is not

considered as a national by any state under the operation of its law". Leave to remain will not however be granted if an individual accepted as stateless is considered admissible to another country provided this is in accordance with the UK's international obligations.

- Any asylum claim accepted for substantive consideration takes priority over a stateless application, whether lodged before the application for stateless leave or disclosed in the course of consideration of the application. No consideration will take place until the individual's asylum claim has been finally determined or withdrawn. If an asylum claim succeeds or if other forms of leave are granted, an individual will not concurrently be eligible for leave to remain as a stateless person.

- Facts relevant to a determination of statelessness are a feature of some asylum claims. Findings of fact established during the asylum procedure, even though asylum or other forms of leave are not granted, may be relied upon in any subsequent application for leave to remain as a stateless person or in any decision in relation to such an application.

- Leave on this basis 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. Neither should it be considered where another EU Member State or Norway / Iceland is responsible for an asylum claim under the Dublin arrangements, or where an individual may otherwise be removed on safe third country grounds.

- Where an application for leave to remain as a stateless person is granted, leave will normally be granted to the claimant and his or her dependants for an initial 30 months. Those granted leave to remain are entitled to take employment and have access to public funds.

- There is no right of appeal against the refusal to grant leave as a stateless person in addition to those which may already be available.

2.2 Procedures

- Applications for leave to remain as a stateless person must be made using a form available on the public website.

- The caseworker will assess the case on the available information, conduct research as necessary and make written enquiries to seek further evidence or information. A personal interview will not be required if there is sufficient evidence of statelessness, including previous findings of fact established during the asylum claim (for example) and the individual is eligible for leave to remain on this basis.

- In all other cases, a personal interview will be arranged to enable the applicant to set out fully his or her case for being considered stateless and to submit any other available evidence. Although this should not normally have the same potential for sensitivity, interviews will be arranged, conducted and recorded in a similar way to asylum interviews, set out in the published guidance on interviews.

- The burden of proof rests with applicants, who are expected to do all they reasonably can to demonstrate their statelessness. A clear lack of cooperation or evidence of bad faith may lead to refusal of an application. Caseworkers must however be ready to undertake research or make enquiries of other national authorities where the applicant has been unable to obtain relevant information.

Part 3: The definition of a stateless person, the assessment of evidence, and determination of claims to be stateless

3.1 Definition

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

*"*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. Thus, 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.

3.2 Burden and standard of proof

The burden of proof lies with the applicant to establish his claim to be stateless with as much evidence as he can reasonably be expected to provide. However, caseworkers should make reasonable efforts to assist the applicant in establishing the necessary evidence, whether by research or enquiry.

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, i.e. more likely than not, since the 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 is the threat to life, liberty and person. For example, the apparent absence of a nationality will not meet the higher standard.

3.3 Gathering and assessment of evidence

Statelessness determination requires a mixed assessment of fact and law. The information that may be relevant can be divided into two categories: evidence relating to the individual's personal circumstances obtained at interview and in writing, and the 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. The following guidance is drawn from the UNHCR procedural guidelines.

Documentary and testimonial evidence

Evidence concerning personal history helps identify the State (or States) whose nationality laws and procedures need to be considered in determining an applicant's nationality status. In any given case, the following examples of evidence may be relevant:

- testimony of the applicant (i.e. written application, interview);
- response(s) from a foreign authority to an enquiry regarding nationality status of an individual (see below);
- identity documents (e.g. birth certificate, extract from civil register, national identity

card, voter registration document); NB: in some countries, women or members of ethnic minorities may have difficulty obtaining such documents due to discrimination.
- passports (see below) or other travel documents (including expired ones);
- documents regarding applications to acquire nationality or obtain proof of nationality;
- certificate of naturalisation;
- 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 (e.g. attestations issued from hospital on birth, vaccination booklets);
- identity and travel documents of parents, spouse and children;
- immigration documents, such as residence permits of country(ies) 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.

Passports

Authentic, unexpired passports raise a presumption that the passport holder is a national of the country issuing the passport. However, this presumption may be rebutted where there is evidence showing that an individual is not actually considered to be a national of a State, 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 is not a manifestation of a State's position that the individual is one of its nationals. No presumption is raised by passports that are shown to be counterfeit or otherwise fraudulently issued.

Oral evidence at interviews

Where there is not as yet sufficient evidence for a positive decision to be made, an interview with an applicant will be an important part of the evidence gathering and an opportunity for the decision-maker to explore any questions regarding the evidence already presented, encouraging applicants to deliver as full an account as possible. That said, an applicant can only be expected to reply to the best of his or her abilities and in many cases even basic information may not be known, for example the place of birth or whether birth was registered. Language analysis cannot determine the nationality of an individual but may be considered in cases of real doubt as to an applicant's country or region of origin.

Applicants who have not previously sought asylum should be reminded at the outset and at the conclusion of the interview that they may do so if they have a fear of return to the country of previous residence. These reminders must be recorded in the interview report.

Country research

Information concerning the circumstances in the country or countries under consideration, evidence about the nationality and other relevant laws, their implementation and the practices of relevant States, can be obtained from a variety of sources, governmental and non-governmental, including from UNHCR Refworld. If the information is not already in the Country

of Origin reports or otherwise readily available, enquiries should initially be submitted to the Country of Origin Information Service (COIS) or, by agreement with COIS, with the Foreign & Commonwealth Office (FCO) and overseas posts.

Enquiries with representatives of overseas governments or authorities
Information provided by foreign authorities may be of central importance to stateless determination procedures, although not necessary if there is otherwise adequate evidence.

Under no circumstances is contact to be made with the authorities of a State (or with any official state-sponsored organisations) against which an individual has previously made an asylum claim unless it has finally been concluded (i.e. the applicant is appeals rights exhausted and has no outstanding further submissions) that he or she is neither a refugee nor entitled to subsidiary protection. Even so, there should be no disclosure of the details or the rejection of an asylum claim, and it would be good practice to ensure that the applicant consents to the contact even where the applicant has already approached those same authorities for assistance on nationality matters.

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 reply must be taken at face value, though it is open to the caseworker to seek clarification from the State concerned. 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.

3.4 Assessment of the evidence and determination of claims to be stateless

An individual's nationality is to be assessed as at the time of determination of eligibility under the 1954 Convention. It is neither a historic nor a predictive exercise. The question to be answered is whether, at the point of making an Article 1(1) determination, an individual is a national of the country or countries in question. Therefore, if an individual is partway through a process for acquiring nationality but those procedures have not been completed, he or she cannot be considered as a national for the purposes of Article 1(1) of the 1954 Convention. Similarly, where requirements or procedures for loss, deprivation or renunciation of nationality have not been completed, the individual is still a national for the purposes of the stateless person definition.

In general terms, as applied to each application, Article 1(1) can be analysed by breaking the definition down into two constituent elements: "not considered as a national…under the operation of its law" and "by any State". This analysis should be taken in reverse order.

(a) "by any state"

Consideration is only necessary of those States with which an individual may be linked, whether by birth on the territory, by descent, by marriage, or by 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 in fact a State; for example, Palestine. However, in such cases, there could be other States in the region (and 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 4

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 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.

(b) "not considered as a national … under the operation of its law"

An understanding of the laws of nationality and their administration in practice in the State or States concerned is essential to the consideration of a claim to be stateless. Where this is not already available from the published country information, a request should be made to COIS and, where appropriate, to the FCO.

The law and practice of nationality can be complex. The following paragraphs, drawn from the UNHCR's guidelines on the definition of a stateless person, are intended to highlight the main elements in ascertaining 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.

When is a person "not considered as a national" under a State's 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, taking account of any review/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 an Article 1(1) determination, an individual is a national of the country in question. As stated above, if an individual is partway through a process for acquiring nationality but those procedures have not been completed, he or she is not a national for the purposes of Article 1(1) of the 1954 Convention. This is to address cases where the person has made an application to the national authority only to find more and more evidence requested, combined with long delays, amounting 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 a national for the purposes of the stateless person definition.

The acquisition of nationality

In most countries, nationality is acquired automatically through birth on the territory or descent, or a combination of the two (as in the UK, where place of birth and status of parents are relevant). Nationality is also acquired automatically by most individuals affected by State succession (i.e. the successor states to those which have ceased to exist, which have separated from the predecessor State and become independent, or which have acquired 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, 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', i.e., a right by which nationality or citizenship is acquired by birth in the territory) or *jus sanguinis* (right of blood, i.e. acquired by parentage). Documents which serve as proof of nationality (e.g. 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 be decisive in proving nationality. The absence of such evidence may mean that nationality was not acquired, but this cannot be taken for granted and the caseworker may well decide to obtain further evidence from the applicant or to check with the relevant overseas authority.

Decisions made by the national authorities

Where the national authorities have in practice treated an individual as a non-national even though he or she would appear to meet the criteria for automatic acquisition of nationality under the operation of a country's laws, it is their position rather than the letter of the law that is determinative in concluding that a State does not consider such an individual as a national. This scenario frequently arises 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.

Assessing nationality in the absence of evidence of the position of the national authorities

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 and 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 persons who are similarly situated.

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. However, if the individual belongs to a group whose members are routinely denied identification documents issued only to nationals, this may indicate that he or she is not considered as a national by the State, but this should not be assumed or accepted without further inquiry.

The results of enquiries with representatives of overseas governments

Such enquiries may be met either with silence or a refusal to respond. It is a matter for judgement in the individual case as to how long it is reasonable to wait. The emphasis should

be on progressing 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. No inference can be drawn from a failure to respond in these circumstances. Conversely, when a State routinely responds to such queries, a lack of response will generally provide strong confirmation that the individual is not a national.

Voluntary renunciation of nationality

Voluntary renunciation relates to an act of free will whereby an individual gives up his or her nationality. This generally takes the form of an oral or written declaration. The subsequent withdrawal of nationality may be automatic or at the discretion of the authorities. Increasingly, States have safeguards in their nationality laws to prevent this from leading to statelessness. However, it continues to occur. Sometimes individuals must renounce their nationality in order to naturalise in another State and may 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 might be able to reacquire such nationality, unlike other stateless persons. There is no obligation to grant leave to remain to those who have become stateless for reasons of personal convenience or choice.

Nationality acquired in error or bad faith

Where the action of the overseas government in a non-automatic mechanism is undertaken in error (for example, because of a misunderstanding of the law to be applied) or in bad faith, this does not in itself invalidate the individual's nationality status so acquired. 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 may be 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.

Part 4: Exclusion from recognition as a stateless person

4.1: those "at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance so long as they are receiving such protection or assistance".

Rule 402 (a) mirrors the provision of Article 1(2)(i) of the 1954 Stateless Convention. In practice it means that 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.

UNRWA was established following the 1948 Arab-Israeli conflict to carry out direct relief and works programmes for Palestine refugees. UNRWA operates in five areas: Jordan, Lebanon, Syria, the West Bank (including East Jerusalem), and Gaza. It provides education, health services, relief and social services to eligible and registered Palestinian refugees. Some five million Palestinians living in these areas are registered with UNRWA but not all Palestinians are in receipt of assistance.

Article 1(2)(i) of the 1954 Stateless Convention reflects the first paragraph of Article 1D of the 1951 Refugee Convention. Article 1D was drafted so as to exclude those Palestinian refugees assisted by UNRWA, on the grounds that they did not need the Refugee Convention's protection and also to ensure there was no overlap between the responsibilities of two UN agencies, UNRWA and UNHCR. The second paragraph 'When such protection or assistance has ceased….' was intended to ensure the continuation of refugee protection in the event that UNRWA assistance ceased to be available before the settlement of the Palestinian refugee question. In the absence of a solution, the General Assembly has repeatedly renewed UNRWA's mandate.

Pending fuller guidance on the operation of Article 1D of the Refugee Convention and the case law which underpins that guidance, a summary is available in paragraphs 2.2.14 to 2.2.25 of the published Operational Guidance Note on asylum applications by persons from the Occupied Palestinian Territories.

4.2: those "who are recognized by the competent authorities of the country in which they have taken residence as having the rights and obligations which are attached to the possession of the nationality of that country"

This 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. This reflects the provisions of Article 1E of the Refugee Convention.

4.3: those for whom there are serious reasons for considering that they have:
(c) "committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provisions in respect of such crimes;"
(d) "committed a serious non-political crime outside the country of their residence prior to their admission to that country;
(e) "been guilty of acts contrary to the purposes and principles of the United Nations."

These are to be understood in a manner consistent with the Asylum Instruction on the interpretation of Article 1F of the Refugee Convention. The provisions of Article 1F are intended to deny the benefits of refugee status to those who would otherwise qualify as refugees but who should not be granted protection because 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 UN.

The burden of proving that an individual falls within these provisions lies with the Secretary of State. In order to make such a finding, caseworkers must have 'serious reasons for considering' that an individual does so fall. This is a more onerous test than 'reasonable grounds'. It requires 'strong' or 'clear and credible evidence' that the individual has committed the crimes or performed the acts in question. It is not to the criminal standard of 'beyond reasonable doubt', but it requires that the caseworker has weighed up all the evidence and come to a reasoned conclusion – 'considering' goes further than simply 'suspecting' or 'believing'.

Part 5: The decision on leave to remain as a stateless person

5.1 Admissibility to the country of former habitual residence or any other country

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).

Where an individual is admissible to another country (for example because he is a national or citizen of that country, or is removable to the country on safe third country grounds) he will not qualify for leave to remain as a stateless person.

5.2 Reasonable grounds for considering that the individual is a danger to security or public order

The 'reasonable grounds' for considering that the individual is a danger to the security or public order of the UK are to be understood in a manner consistent with the interpretation of the equivalent provisions in Rule 334(iii) on asylum and 339D(iii) of the Rules on asylum and Humanitarian Protection. The burden of proof lies with the Secretary of State, who must 'be satisfied' that such reasonable grounds exist. As with the exclusion provisions, strong, or clear and credible evidence must be present.

5.3 General grounds for refusal

The general grounds are fully set out in paragraph 322 of the Rules. If required, further guidance should be sought from Operational Policy and Rules Unit.

Part 6: The grant or refusal of leave to remain as a stateless person and the family members of a stateless person

6.1 Applicants

Under rule 405, an applicant who meets the requirements of rule 403 may be granted limited leave to remain for a period not exceeding 30 months (2.5 years). Those granted leave have access to public funds and are entitled to work.

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.

An applicant who does not meet the requirements of Rule 403 or who falls within the terms of Rule 404 must be informed of the decision in a letter setting out the reasons. The decision and letter should be agreed by a senior caseworker. That letter (and all other correspondence with the claimant) should be sent to the individual's legal representative if there is one.

Refusal of leave under this route does not generate a free-standing right of appeal. However, in some cases, a refusal decision may generate an appeal right under the Nationality, Immigration and Asylum Act 2002. For example:

i) If an applicant has leave to enter or remain at the time that he made his statelessness application, but this has expired by the time that the decision to refuse leave is made;

ii) If the applicant is served with a decision to remove at the same time as his application for leave is refused.

In these circumstances, appropriate appeal papers should be issued with the decision to refuse leave.

6.2 Family members

Dependants already accepted as such who are accompanying the applicant in the UK should, irrespective of their national status, be included in the application form submitted in support of a claim. Rules 410-411 set out the requirements for limited leave, Rule 412 for refusal or curtailment, and Rule 415-416 for the grant or refusal of indefinite leave to remain respectively. Where an individual is granted leave to remain as a stateless person, family members will be granted leave to remain in line.

Part 7: The issue of travel documents to those given leave to remain as stateless persons

Persons who are recognised as stateless and given leave to remain in accordance with this process are entitled to apply for a Travel Document issued in accordance with the UK's obligations under the 1954 Convention. Applications for a Stateless person travel document should be made using application form TD112(BRP). Where a person recognised as stateless does not have a valid Biometric Residence Permit (BRP) confirming their current immigration status they will have to make a simultaneous BRP application with their TD application. Where an applicant has to make a simultaneous application the applications are made on the same form.

Further information is available on the public website at http://www.ukba.homeoffice.gov.uk/visas-immigration/while-in-uk/travel-abroad/traveldocuments/.

Annex A The Immigration Rules

Part 14. Stateless persons

Definition of a stateless person

401. For the purposes of this Part a stateless person is a person who:

(a) satisfies the requirements of Article 1(1) of the 1954 United Nations Convention relating to the Status of Stateless Persons, as a person who is not considered as a national by any State under the operation of its law;

(b) is in the United Kingdom; and

(c) is not excluded from recognition as a Stateless person under paragraph 402.

Exclusion from recognition as a stateless person

402. A person is excluded from recognition as a stateless person if there are serious reasons for considering that they:

(a) are at present receiving from organs or agencies of the United Nations, other than the United Nations High Commissioner for Refugees, protection or assistance, so long as they are receiving such protection or assistance;

(b) are recognised by the competent authorities of the country of their former habitual residence as having the rights and obligations which are attached to the possession of the nationality of that country;

(c) have committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provisions in respect of such crimes;

(d) have committed a serious non-political crime outside the UK prior to their arrival in the UK;

(e) have been guilty of acts contrary to the purposes and principles of the United Nations.

Requirements for limited leave to remain as a stateless person

403. The requirements for leave to remain in the United Kingdom as a stateless person are that the applicant:

(a) has made a valid application to the Secretary of State for limited leave to remain as a stateless person;

(b) is recognised as a stateless person by the Secretary of State in accordance with paragraph 401;

(c) is not admissible to their country of former habitual residence or any other country; and

(d) has obtained and submitted all reasonably available evidence to enable the Secretary of State to determine whether they are stateless.

Refusal of limited leave to remain as a stateless person

404. An applicant will be refused leave to remain in the United Kingdom as stateless person if:

(a) they do not meet the requirements of paragraph 403;

(b) there are reasonable grounds for considering that they are:

(i) a danger to the security of the United Kingdom;

(ii) a danger to the public order of the United Kingdom; or

(c) their application would fall to be refused under any of the grounds set out in paragraph 322 of these Rules.

Grant of limited leave remain to a stateless person

405. Where an applicant meets the requirements of paragraph 403 they may be granted limited leave to remain in the United Kingdom for a period not exceeding 30 months.

Curtailment of limited leave to remain as a stateless person

406. Limited leave to remain as a stateless person under paragraph 405 may be curtailed where the stateless person is a danger to the security or public order of the United Kingdom or where leave would be curtailed pursuant to paragraph 323 of these Rules.

Requirements for indefinite leave to remain as a stateless person

407. The requirements for indefinite leave to remain as a stateless person are that the applicant:

(a) has made a valid application to the Secretary of State for indefinite leave to remain as a stateless person;

(b) was last granted limited leave to remain as a stateless person in accordance with paragraph 405;

(c) has spent a continuous period of five years in the United Kingdom with lawful leave, except that any period of overstaying for a period of 28 days or less will be disregarded;

(d) continues to meet the requirements of paragraph 403.

Grant of indefinite leave remain as a stateless person

408. Where an applicant meets the requirements of paragraph 407 they may be granted indefinite leave to remain.

Refusal of indefinite leave to remain as a stateless person

409. An applicant will be refused indefinite leave to remain if:

(a) the applicant does not meet the requirements of paragraph 407;

(b) there are reasonable grounds for considering that the applicant is:

(i) a danger to the security of the United Kingdom;

(ii) a danger to the public order of the United Kingdom; or

(c) the application would be refused pursuant to paragraph 322 of these Rules.

Requirements for limited leave to enter or remain as the family member of a stateless person

410. For the purposes of this Part a family member of a stateless person means their:

(a) spouse;

(b) civil partner;

(c) unmarried or same sex partner with whom they have lived together in a subsisting relationship akin to marriage or a civil partnership for two years or more;

(d) child under 18 years of age who:

(i) is not leading an independent life;

(ii) is not married or a civil partner; and

(iii) has not formed an independent family unit.

411. The requirements for leave to enter or remain in the United Kingdom as the family member of a stateless person are that the applicant:

(a) has made a valid application to the Secretary of State for leave to enter or remain as the family member of a stateless person;

(b) is the family member of a person granted leave to remain under paragraphs 405 or 408;

(c) if seeking leave to enter, holds a valid United Kingdom entry clearance for entry in this capacity.

Refusal of leave to enter or remain as the family member of a stateless person

412. A family member will be refused leave to enter or remain if:

(a) they do not meet the requirements of paragraph 411;

(b) there are reasonable grounds for considering that:

(i) they are a danger to the security of the United Kingdom;

(ii) they are a danger to the public order of the United Kingdom; or

(c) their application would fall to be refused under any of the grounds set out in paragraph 320, 321 or 322 of these Rules.

Grant of leave to enter or remain as the family member of a stateless person

413. A person who meets the requirements of paragraph 411 may be granted leave to enter or remain for a period not exceeding 30 months.

Curtailment of limited leave to enter or remain as the family member of a stateless person

414. Limited leave to remain as the family member of a stateless person under paragraph 413 may be curtailed where the family member is a danger to the security or public order of the United Kingdom or where leave would be curtailed pursuant to paragraph 323 of these Rules.

Requirements for indefinite leave to remain as the family member of a stateless person

415. The requirements for indefinite leave to remain as the family member of a stateless person are that the applicant:

(a) has made a valid application to the Secretary of State for indefinite leave to remain as the family member of a stateless person;

(b) was last granted limited leave to remain as a family member of a stateless person in accordance with paragraph 413; and

(i) is still a family member of a stateless person; or

(ii) is over 18 and was last granted leave as the family member of a stateless person; and

(a) is not leading an independent life;

(b) is not married or a civil partner; and

(c) has not formed an independent family unit.

(c) has spent a continuous period of five years with lawful leave in the United Kingdom, except that any period of overstaying for a period of 28 days or less will be disregarded.

Refusal of indefinite leave to remain as the family member of a stateless person

416. An applicant will be refused indefinite leave to remain as a family member of a stateless person if:

(a) they do not meet the requirements of paragraph 415;

(b) there are reasonable grounds for considering that:

(i) they are a danger to the security of the United Kingdom;

(ii) they are a danger to the public order of the United Kingdom; or

(c) the application would fall for refusal under paragraph 322 of these Rules.

Annex B The Statelessness Conventions

The 1954 Convention relating to the Status of Stateless Persons

The 1954 Convention regulates the status of non-refugee stateless persons and ensures that stateless persons enjoy human rights without discrimination. It sets out a common framework with minimum standards of treatment for stateless persons, provides the stateless with an internationally recognised legal status, and (for example) offers access to travel documents for those lawfully staying in a territory. The UK is a signatory, subject to certain reservations.

Key provisions

Article 1. - Definition of the term "stateless person"

1. 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.

2. This Convention shall not apply:

(i) To persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance so long as they are receiving such protection or assistance;

(ii) To persons who are recognized by the competent authorities of the country in which they have taken residence as having the rights and obligations which are attached to the possession of the nationality of that country;

(iii) To persons with respect to whom there are serious reasons for considering that:

(a) They have committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provisions in respect of such crimes;

(b) They have committed a serious non-political crime outside the country of their residence prior to their admission to that country;

(c) They have been guilty of acts contrary to the purposes and principles of the United Nations.

Article 28. - Travel documents

The Contracting States shall issue to stateless persons lawfully staying in their territory travel documents for the purpose of travel outside their territory, unless compelling reasons of national security or public order otherwise require, and the provisions of the schedule to this Convention shall apply with respect to such documents. The Contracting States may issue such a travel document to any other stateless person in their territory; they shall in particular give sympathetic consideration to the issue of such a travel document to stateless persons in their territory who are unable to obtain a travel document from the country of their lawful residence.

Article 31. - Expulsion

“1. The Contracting States shall not expel a stateless person lawfully in their territory save on grounds of national security or public order.

2. The expulsion of such a stateless person shall be only in pursuance of a decision reached in accordance with due process of law. Except where compelling reasons of national security otherwise require, the stateless person shall be allowed to submit evidence to clear himself, and

to appeal to and be represented for the purpose before competent authority or a person or persons specially designated by the competent authority.

3. The Contracting States shall allow such a stateless person a reasonable period within which to seek legal admission into another country. The Contracting States reserve the right to apply during that period such internal measures as they may deem necessary."

Article 32 requires signatory states to as far as possible facilitate the assimilation and naturalisation of stateless persons.

The 1961 Convention on the Reduction of Statelessness

This is intended as the primary international legal instrument adopted to deal with the means of avoiding statelessness. The UK is a signatory.

Document Control

Change Record

Version	Authors	Date	Change Reference
1.0	BG	2013-05-01	First approved version on Horizon