

KIND Resources.

Routes to children's routes to nationality and immigration status

A guide

August 2022



1.

Children's nationality and immigration status

This is a summary of some of the ways that a child's immigration status can be improved or they can acquire British citizenship.

2.

Complexity

This summary illustrates that there are many ways a child's citizenship or immigration status might be resolved, some of which overlap. Interpreting and applying British immigration and nationality law is complex, and specialist legal advice should be sought to confirm the options of any child who does not have proof of British citizenship (usually evidenced by a valid British passport or certificate of citizenship).

This is not a comprehensive list. This summary does not cover all possible routes or complexities of law and policy.¹

3.

British Citizenship

The legal requirements for British citizenship are set out in the British Nationality Act 1981 [BNA]. Since the BNA took effect (in 1983), only some children born in the UK automatically have British citizenship from birth. In addition, not all children born outside the UK to British citizen parents are automatically British citizens from birth.

It is very often in a child's best interests to acquire British citizenship as soon as they are eligible, but there are sometimes barriers to becoming a British citizen. A 'good character' requirement applies to some (but not all) routes to citizenship after age 10.

Where a child is born British, there is no fee associated with citizenship (other than the normal cost of obtaining a passport). For children who must register in order to become British citizens, there are high fees for most citizenship applications (£1,012 in 2022). But, from 16 June 2022, children in care are exempt from the fee and other children who cannot afford the fee may qualify for a waiver. See <https://prcbc.files.wordpress.com/2019/03/children-and-their-rights-to-british-citizenship-march-2019.pdf>

The Project for the Registration of Children as British Citizens has prepared

a helpful flowchart to aid in identifying which children have or can acquire British citizenship, available here (at p 8).

British at birth

Children born in the UK who are automatically British citizens at birth include:

- Children born in the UK before the BNA 1981 took effect (1 January 1983): automatically British citizens at birth.
- Children born in the UK before 1 July 2006 and:
 - At the time of the child's birth, their mother was settled in the UK or British; or
 - At the time of the child's birth, their father was settled or British and married to the child's mother.
- Children born in the UK on or after 1 July 2006 and at the time of the child's birth, either parent was British or settled in the UK.

Children born outside the UK who are automatically British citizens at birth:

- Children born before 1 July 2006 outside the UK and:
 - At the time of the child's birth, the child's mother was British, otherwise than by descent; or
 - At the time of the child's birth, the child's father was married to the mother and was British, otherwise than by descent.²
- Children born on or after 1 July 2006 outside the UK, and at the time of the child's birth, the child's mother or father or both were British otherwise than by descent.

Example: Susie

Susie was born on 5 June 2006 in Thailand, where her parents were working for a hotel. Her mother was born British in the UK to British parents. Susie's father is a Thai citizen and was married to her mother when Susie was born. Susie was a British citizen automatically at birth, by descent.

Example: Freddie

Susie's friend Freddie was born on 5 August 2006 in Thailand. Freddie's parents are married and worked with Susie's parents at the hotel. Freddie's mother was British (from birth), born in China to British citizen parents in China on work visas. Freddie's father, Ben, was born in the United States to British citizen parents in the US on student visas. Ben was British from birth (and also a US citizen, as children born in the US

automatically acquire US citizenship). Freddie was not a British citizen at birth. Even though both his parents were British citizens at birth, they are both British citizens by descent, and this citizenship cannot automatically pass to a child born outside the UK. Freddie is a US citizen (transmitted through his father), and he may be able to acquire British citizenship if the family return to live in the UK.

Children become British upon adoption by a British citizen:

Children who are formally adopted in the UK by a British citizen automatically become British citizens from the date of the adoption order. BNA 1981 Section 1(5). This is also the case for children adopted abroad, in a country that is a signatory of the 1993 Hague Convention, by at least one British parent.³ There are also provisions in Home Office policy for children adopted in certain designated countries, by at least one British parent, to be registered as British citizens upon application before their 18th birthday.

4. Entitlement to register as British

Some children are eligible to register as British citizens, either by statutory entitlement or on a discretionary basis.

Children born in the UK have a statutory entitlement to register as British in certain circumstances, including:

- **Parent settles or naturalizes:** If a parent of a child born in the UK becomes a British citizen or becomes settled while the child is a minor, the child has a statutory entitlement to register as British (if other conditions are met) (Section 1(3) of BNA 1981). This application must be made before the child's 18th birthday.
- **First 10 years in UK:** A child born and resident in the UK for the first ten years of their life has a statutory entitlement to British citizenship (if other conditions are met) (Section 1(4) of BNA 1981). This application can be submitted any time after the first 10 years -- even after the child's 18th birthday.
- **Stateless + 5 years:** A child who is and has always been stateless has a statutory entitlement to British citizenship at age 5 (if other conditions are met) (Schedule 2, Paragraph 3 of BNA 1981). This application must be made before the child's 22nd birthday.

Example: Andy

Andy was born in the UK in 2002 and has never left the UK except for a few short holidays. Andy's parents were Nigerian citizens in the UK on work permits at the time of Andy's birth. Andy was not a British citizen

at birth. Andy's parents were both granted indefinite leave to remain in the UK when he was 3 years old. Andy then had a statutory entitlement to register as British because his parents had become 'settled' in the UK. For this type of application, he needed to apply before his 18th birthday, but no application was made, and he is now 20 years old, so this basis for British citizenship has been lost. He has an alternate statutory entitlement, however – he is eligible for British citizenship because he was born in the UK and lived continuously in the UK for the first 10 years of his life. He can submit this type of application at any age. Andy has no criminal history and has never been in any trouble; there are no concerns about whether he is of good character.

Example: Ali

Ali was born in the UK in 2015 and has never left. His parents are stateless Palestinians who grew up in the United Arab Emirates (UAE). At the time of Ali's birth, they had applied to stay in the UK, but they hadn't gotten decisions yet. They were granted limited leave to remain as stateless persons when Ali was 2 years old. Ali is and always has been stateless, his parents have no permission to reside in UAE, and they and Ali are not 'admissible' to any country. Ali had a statutory entitlement to British citizenship from age 5 and must apply before he turns 22. His parents' immigration status at the time of his birth is not directly relevant to this application, but their recognition as stateless persons will help prove that Ali is entitled to British citizenship as a stateless child. If he continues to reside continuously in the UK, Ali will have another statutory entitlement to British citizenship at age 10, and that application could be submitted at any age. Ali could also have an alternate statutory entitlement to British citizenship, if either of his parents is granted indefinite leave to remain (which they may be eligible for 5 years after being granted permission to stay as stateless persons) or naturalises as a British citizen.

Example: Aisha

Ali's friend Aisha was born in Kuwait in 2014 and came to the UK with her parents when she was 6 months old. Her parents are stateless and were granted leave to remain in the UK as stateless persons in 2019. Even though she is and always has been stateless and is not admissible to Kuwait, Aisha had no statutory entitlement to British citizenship at age 5 because she was not born in the UK. If she had been born in the UK (and met continuous residency requirements) she would also have had a statutory entitlement to register as British when either of her parents 'settle' (are granted indefinite leave to remain) or when she turns 10 – but these also do not apply because she was not born in the UK. She could be granted leave to remain in the UK under provisions of the Immigration Rules, for

example as a stateless person or as a child living in the UK for 7 years. She could also apply for British citizenship under the discretionary route (BNA Section 3(1)). Such an application will be stronger if made when: 1) her parents have been granted indefinite leave to remain (for which they will likely be eligible in 2024 – 5 years after being granted permission to stay in the UK as stateless persons); or 2) she has leave to remain and has been living in the UK for 10 years and meets other criteria (see below about the discretionary route to citizenship and immigration routes).

Provisions to correct previously discriminatory laws:

The BNA 1981 has been amended to correct some previously discriminatory provisions. For example, a child can apply to register as British (regardless of whether they were born inside or outside of the UK), if the child did not acquire British citizenship through their mother but he or she:

- Would have been born British or would be entitled to register as British if at the time of their birth their British father had been married to their mother.
- Was born after 1 July 2006 and their biological father is British, but the child does not have British citizenship because their mother's spouse at the time of child's birth was not a British citizen.

Unlike most other applications to register as a British citizen, applications to correct historic discrimination are free of charge; but if granted after the child's 18th birthday, an £80 citizenship ceremony fee applies.

5.

Discretionary route to British citizenship

Even if not entitled to register as British citizens, some children are eligible to register under discretionary provisions of the BNA 1981 (Section 3(1) and Home Office guidance). Many well-prepared discretionary applications for eligible children succeed. It is strongly advised to seek specialist immigration advice when considering or preparing a discretionary application for citizenship.

The following are relevant considerations:

- Registration would be in the child's best interests.
- The child's future lies in the UK.
- The child's age and length of residence in the UK
- The child's immigration status: children who already have

permission to stay in the UK have stronger citizenship claims.

- Parents' immigration status: children whose parents are British citizens or settled in the UK have stronger citizenship claims.
- The child demonstrates 'good character', if they are age 10 or older.

Example: Sam

Sam was born in Nigeria in 2006. His parents brought him to the UK at age 7, in 2013. His parents had leave to remain as students until 2015 but overstayed their student visas due to hardships they were facing including death threats against them and their family back home. They claimed asylum in 2016, but in 2018, their applications were refused. They appealed, but the appeal process was not complete until mid-2020, at which point they were finally refused and their appeal rights exhausted. By 2022, Sam, now age 16 and in the UK for 9 years, considers Birmingham his home. He doesn't remember Nigeria. He is doing well in school, has some good friends, and sings in a choir at the church with which his family is very involved. He has anxiety and has been having counselling for over a year, which seems to be helping, but his counsellor is very concerned that being forced to leave the UK would affect his mental health very negatively. Neither he nor his parents have been convicted of any criminal offenses.

Sam could apply for British citizenship on a discretionary basis, and it might be granted; but a solicitor would likely advise that his application would be much stronger if he first applies for permission to remain as a child who has lived in the UK for more than 7 years; this application is likely to be granted and result in limited leave to remain for Sam and his parents, and he could later apply for British citizenship on the discretionary route (which he should do before his 18th birthday). He should submit evidence that British citizenship is in his best interests; he has lived in the UK for many years, since age 7; (from 2023) he has lived in the UK for 10 years; he is of good character; he and his parents have limited leave to remain on a route to settlement; his parents agree to him acquiring British citizenship; and his future lies in the UK.

6.

British citizenship for children in care which will result in loss of other nationality

A local authority must obtain permission from a Court before applying for British citizenship for a child in care, where the birth parents are opposed and acquiring British citizenship could mean the child would lose their existing citizenship. See R(Y) (Children in Care: Change of Nationality) (2020) EWCA Civ 1038.

Immigration status

There are many routes to regularise or improve the immigration status of children and young people in the UK, and their family members. There are high fees for many of these applications, but fee waivers are available for destitute applicants. These are some examples (but, again, this is not an exhaustive list):

1. Born in the UK and in care: Children who were born in the UK and are in care (with parental authority vested solely in local authority) are eligible for indefinite leave to remain (if other conditions are met). (Immigration Rules).
2. In care but may return to parents or country of origin: A child in care (who is not eligible for (1) above), for whom there is a realistic possibility that they will return to their parents or country of origin (and this is in their best interests):
3. These children may be granted permission to stay in the UK for 12 months. The child should be granted indefinite leave to remain after 4 years of limited leave if it transpires that there is no realistic possibility of removal. This route is a concession in Home Office guidance: Annex FM 3.2: children guidance.
4. In care and not likely to leave the UK: A child in care (who is not eligible for (1) above), for whom there is no realistic possibility that they will be leaving the UK:
5. These children will usually be granted permission to stay for four years. The child should be granted indefinite leave to remain after 4 years of limited leave if there is no realistic possibility of removal. This route is a concession in Home Office guidance: Annex FM 3.2: children guidance.
6. Refugee children: A child who is at risk of persecution or serious harm in their home country should be granted refugee status or humanitarian protection in the UK, for five years. After five years, the child may be eligible to be granted indefinite leave to remain. Refugee children can be with their families or separated (aka unaccompanied asylum-seeking children: 'UASCs') (Immigration Rules).
7. Unaccompanied child and inadequate reception facilities in another country: If an unaccompanied non-British child is not eligible for refugee status or humanitarian protection, but there are not adequate arrangements for the child in a country to which they could return, the child may be granted permission to stay until they turn 17 and a half or for 30 months, whichever is

shorter (Immigration Rules). Some of these children may be taken into care, in which case rules relating to looked after children should also be considered.

8. Stateless children: A child who is stateless (but not a refugee and not eligible for British citizenship as a stateless child) may be granted permission to stay as a stateless person, for five years. They must meet other conditions, including that they are not 'admissible' to any other country. After 5 years, they may be eligible to apply for indefinite leave to remain (Immigration Rules). This route is not specific to children, but eligible children can benefit from it.
9. 7 years' residence: Children under 18 years of age who have lived in the UK for at least seven years can be granted permission to stay in the UK if their circumstances mean it would be unreasonable to expect them to leave the UK. The child will normally be granted permission to stay for 30 months, or (from June 2022) 5 years. Close family members (parents and minor siblings) can be granted permission to stay with the child. From June 2022, children born in the UK and resident for 7 years may be eligible for indefinite leave to remain. (Immigration Rules).
10. Young adults (age 18-24) resident in UK majority of life: Young people aged 18-24 years who have lived in the UK for more than half their life can be granted permission to stay. The young person will usually be granted permission to stay for 30 months, or (from April 2022) for 5 years. (Immigration Rules).
11. Indefinite leave to remain (ILR) after 5 years for young people in UK majority of life before age 25: Young people aged 18-24 who have lived in the UK for more than half their life can apply for indefinite leave to remain after 5 years with permission to stay. The application can be made after age 24 if the relevant period of residence was completed before the applicant's 25th birthday. (Home Office Policy Concession and Immigration Rules from April 2022).
12. European Union / European Economic Area (EU/EEA) Children and young people (post-Brexit): Children and young people who are EEA nationals or children of EEA nationals may be eligible for EU Settled Status or Pre-Settled Status, if resident in the UK before 31 December 2020. Their status may be linked to that of an EEA national parent, but some children and young people have rights based on EU law independent of their parents' status. Applications should have been made by 30 June 2021,

but applications made after that date, with good reason, can be accepted. (EU law and caselaw).

13. 'Zambrano carers': the non-EEA national parents or guardians of a British child who was resident in the UK before 31 December 2020 may be eligible for EU settled status or Pre-Settled Status as 'Zambrano carers'. The possibility of a late application (after June 2021) should be considered in certain circumstances. If the parent has permission to stay in the UK for other reasons, they may still benefit from EU Settled or Pre-Settled Status. (EU law and caselaw).
14. Parent of child with British citizenship: A parent of a British citizen child may be eligible to be granted permission to stay in the UK based on their relationship with their child in some circumstances, for example if they have an ongoing relationship with their child and, the child's other parent is a British citizen or settled in the UK, and they are not in a marriage-like relationship with the child's other parent. This might also apply if the non-citizen parent has sole parental responsibility for the child and it would not be reasonable to expect the child to leave the UK. (Article 8 of the European Convention on Human Rights (ECHR), and Immigration Rules).
15. Article 8 ECHR: The UK is a party to the European Convention on Human Rights (ECHR). This did not change with Brexit. Article 8 of the ECHR protects a person's right to private and family life. Even if an applicant does not meet the requirements of the Immigration Rules, in some circumstances, a child and/or adult family member will have the right to remain in the UK due to their Article 8 right to family or private life.

** Immigration and nationality laws change frequently, and a child's eligibility for a particular status may change based on their age, length of residence in the UK, family circumstances, being taken into care, and other factors. Specialist advice is required.*

*** It is a criminal offense for anyone to give immigration or nationality advice unless they are suitably qualified as a solicitor, barrister, or registered adviser with the Office of the Immigration Services Commissioner (OISC).*

Endnotes

1. In particular, this summary does not attempt to cover colonial forms of British nationality, eg British Overseas Territories Citizenship, British Overseas Nationality, British Overseas Citizenship, British Subjects, or British Protected Persons. People with these forms of British nationality (and their descendants) will likely require specialist legal advice.

2. 'British citizenship otherwise than by descent' is a potentially confusing term. A British citizen 'by descent' has acquired their citizenship only through their parents' citizenship and not any other route. Most British citizens are 'British citizens otherwise than by descent'. See the glossary (end of this document) for more information.

3 <https://www.gov.uk/government/publications/intercountry-adoption-and-the-1993-hague-convention-a21>

7.

Glossary

Child means a person under the age of 18. In some parts of the UK, people are no longer considered children at age 16 for some purposes, but for immigration and citizenship, the age of adulthood is 18.

Citizenship means a legal bond between a state and a person (a citizen), entitling the person to certain rights such as a passport, the right to vote in all elections, an unconditional right to reside in the territory, unconditional access to be employed and use public health services, consular assistance and diplomatic protection when abroad, and other rights and duties.

Citizenship by descent refers to the status of children born outside the UK to British citizen parents. Their citizenship is based solely on being the child of a British citizen. Citizens by descent are generally not able to pass their British citizenship on to their children if also born outside the UK. British citizenship otherwise than by descent is citizenship based on being born, adopted, registered or naturalised in the UK or a qualifying territory – often a parent of such a child is British, but there is some other key factor vital to this type of citizenship, such as birth or a period of residence in the UK. Different rules apply if a parent of a child born outside the UK was in Crown service, a specially designated service, or European Community institution service at the time of the child's birth.

Discretionary route to citizenship means that someone may be granted citizenship. This does not mean that the Home Office decision can be arbitrary or unreasonable – a decision on a discretionary application should be made on the balance of various factors set out in Home Office guidance (compare with statutory entitlement to citizenship below).

EU Pre-Settled Status is temporary permission to stay (or right to reside) in the UK for EEA nationals (and their dependents) who were in the UK prior to 31 Dec 2020 but had not yet been residing in the UK for 5 years at that time. After 5 years residence, this status can be changed to EU Settled Status.

EU Settled Status is permission to stay (or right to reside) in the UK for EEA nationals (and their dependents) who were present in the UK prior to 31 Dec 2020, with no time limit. Although there is no time limit on it, EU Settled Status can be revoked in some circumstances.

Good character is a legal requirement for some citizenship applications, but it is not defined in the British Nationality Act. Home Office guidance lists numerous factors that should be considered when assessing whether a person is of 'good character', including: 'all aspects of a person's character, including both negative factors, for example criminality, immigration law

breaches and deception, and positive factors, for example contributions a person has made to society'. The length of time since a criminal conviction and evidence of rehabilitation are relevant. Some children with criminal convictions or other aspects of 'bad' character are granted British citizenship.

Indefinite leave to remain means permission to stay or a right to reside in the UK with no time limit. Although there is no time limit on it, indefinite leave to remain can be revoked in some circumstances.

Leave to remain means permission to stay or a right to reside in the UK. The April 2022 changes to the Immigration Rules substitute the term 'leave to remain' with 'permission to stay' in many instances but retain the term 'indefinite leave to remain'.

National and nationality in this document mean 'citizen' and 'citizenship' and relate to the legal bond between a person and their country (in some contexts, these terms have different meanings).

Naturalisation in the UK means the process of an adult becoming a British citizen.

Registration in the UK means the process of a child acquiring British citizenship.

Settled in the UK means the person has indefinite leave to remain or EU Settled Status – that is, permission to stay in the UK with no time limit.

Stateless means 'not considered as a national by any state under the operation of its law'. This definition is set out in the 1954 Convention relating to the Status of Stateless Persons, a treaty to which the UK is a party and under which the UK has binding obligations.

Statutory entitlement [to citizenship] means that someone must be granted citizenship if they meet the criteria set out in the British Nationality Act (compare with discretionary citizenship above).

Unaccompanied asylum-seeking child means a child who is seeking to stay in the UK because they fear persecution in their home country, and they are not with a parent or other adult guardian.