



U N I T E D STATELESS

On August 1, 2023, US Citizenship and Immigration Services (USCIS) announced new guidance for stateless individuals in the United States.

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- [What does the new USCIS guidance say?](#)

The new USCIS guidance says several important things. First, the guidance provides a definition of statelessness that is consistent with international law: “A stateless person is generally not considered a national by any state under the operation of its laws.” Second, it provides an internal procedure for USCIS to create a report when someone who is applying for an immigration benefit with that agency has indicators of statelessness. The report is to help guide the USCIS agent in making a decision on the application but it’s ultimately up to the agent to determine whether the applicant is stateless and whether to approve or deny the application. Additionally, the new guidance also lays out several types of immigration applications where statelessness is particularly relevant including: deferred action; parole in place; asylum and refugee applications; T and U Visa applications; and Temporary Protected Status (TPS).

- [Who does this apply to?](#)

These new policy guidelines apply to anyone who is applying for an immigration benefit before USCIS, or who already has a pending application before USCIS as of October 30, 2023. Whenever there is evidence that the person is not a national of any country under the operation of its law, USCIS may use this new guidance to create an internal report. While being stateless does not in itself establish eligibility for any immigration benefit, an applicant’s statelessness may be relevant in determining eligibility for a variety of immigration benefits or may be considered a factor in the exercise of discretion.

It is important to understand that USCIS is the agency that deals with affirmative applications, which means the kind of applications that are not in immigration court.

United Stateless is a national organization led by stateless people whose mission is to build community among those affected by statelessness, and to advocate for their human rights.

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- [Does this mean I can get legal status if I am stateless?](#)

This policy guidance does not create new pathways to legal status based on statelessness. However, the language of the guidelines suggests that certain applications may be more likely to be approved because statelessness will be taken into account.

For example a stateless person may apply for Deferred Action or Parole in Place. These benefits provide work authorization and protection against deportation. While it was possible for a stateless person to apply for these benefits before the guidance, the likelihood of approval is now improved.

You may be eligible for Deferred Action if you are currently in the United States with no lawful status, and not under a final order of removal. You may be eligible for Parole in Place if you are currently in the United States with no lawful status and did not enter the country legally.

You should contact an experienced immigration attorney to understand exactly how this guidance affects your case.

- [What if I'm in removal proceedings or already have a final order of removal?](#)

The guidance applies to applications before USCIS, which are sometimes referred to as affirmative applications. A defensive application is usually referring to an application in immigration court; as in, defending against deportation. This guidance does not apply to immigration court or removal proceedings.

If you are under a final order of removal or are under Order of Supervision, you are not eligible to apply for Deferred Action or Parole in Place at this time.

However, there may be some ways this guidance could help people in removal proceedings. You should contact an experienced immigration attorney to understand exactly how this guidance affects your case.

- [When does the new guidance take effect?](#)

The guidance goes into effect on October 30, 2023, and will apply to all applications pending or filed on and after that date.

- [My case was already denied. Does the policy guidance apply retroactively?](#)

Probably not. It is important to understand that this is a new policy which is different from a change in law. The guidelines make it clear that decisions to approve or deny an application lie with the USCIS adjudicating officer, and that statelessness is just one of many factors that can affect the outcome. It is unlikely that this change in policy alone will create sufficient grounds to reopen a case that was previously denied. However, if your case was previously denied before you knew you were stateless or before you became stateless, this could create a change in circumstances that could lead USCIS to reopen your case.

Furthermore, even if you previously applied for an immigration benefit and were denied, you might now be eligible for the temporary, discretionary benefits of either Deferred Action or Parole in Place.

Keep in mind that if you were ordered removed or if you are currently under an Order of Supervision, you are not eligible to apply for Deferred Action unless your case is reopened and dismissed. You might be eligible for Parole in Place, but only if you did not enter the US legally.

You should contact an experienced immigration attorney to understand exactly how this guidance affects your case.

- [Can I apply for a statelessness determination from USCIS?](#)

No. Individuals cannot request that USCIS create a statelessness report. Only a USCIS representative can request that such a report be made, and generally only in connection with an application that is open and pending.

The report created by USCIS is not public and will not be provided automatically to the applicant. However, USCIS has indicated that the report would be included in a person's request for immigration files under the Freedom of Information Act (FOIA).

- [What is Deferred Action and how can I apply?](#)

Deferred Action is a temporary, discretionary benefit that protects noncitizens from deportation but does not grant lawful permanent residence or a pathway to US citizenship. The benefits of Deferred Action include protection from deportation, a work permit and Social Security number, and, if eligible, access to public benefits programs like food stamps, as well as Social Security retirement. Unfortunately there is no travel document available for individuals in Deferred Action status, but stateless individuals

who have valid travel documents may be able to travel internationally with Deferred Action if they get advance permission to do so.

Stateless people can apply for Deferred Action if they are physically in the United States. You must demonstrate that you are stateless, and you should show any positive factors that will support a favorable exercise of discretion. Look at this online [guidance from USCIS](#). Unfortunately, if you are currently under a final order of removal or Order of Supervision, you are not eligible to apply for Deferred Action under this policy.

If you think you may be eligible for Deferred Action, you should contact an experienced immigration attorney to better understand the application process and what should be included.

- [What is Parole in Place and how can I apply?](#)

Similar to Deferred Action, Parole in Place is a temporary, discretionary benefit that protects noncitizens from deportation but does not grant lawful permanent residence or a pathway to US citizenship. The benefits of Parole in Place include protection from deportation, a work permit and Social Security number, and, if eligible, access to public benefits programs like food stamps, as well as Social Security retirement.

The primary difference between Deferred Action and Parole in Place is that in order to be eligible for Parole in Place, you must have entered the United States without inspection or permission (illegally). If you entered the US with any kind of visa or permission, you are not eligible to apply for Parole in Place.

Stateless people can apply for Parole in Place if they are physically in the United States. You must demonstrate that you are stateless, and you should show any positive factors that will support a favorable exercise of discretion. Look at this online [guidance from USCIS](#). Unfortunately, if you are currently under a final order of removal or Order of Supervision, you are not eligible to apply for Parole in Place.

If you think you may be eligible for Parole in Place, you should contact an experienced immigration attorney to better understand the application process and what should be included.

- [I entered without inspection \(sometimes called an illegal entry\). Can the new guidance help me?](#)

Potentially. The new guidance allows for applications for Parole in Place (PIP) for stateless people. PIP creates the legal fiction that an individual was lawfully admitted to the United States, even when the person entered without permission. If you want to apply for an immigration benefit that requires a lawful entry, you may be able to take advantage of this. However, keep in mind that you will need to meet all other eligibility requirements. Additionally, if you are in removal proceedings or under a final order of removal, you are not eligible to apply.

You should contact an experienced immigration attorney to understand exactly how this guidance affects your case.

- [I'm applying for asylum. Can the new guidance help me?](#)

The guidance specifically mentions that statelessness is relevant in asylum and refugee applications. The guidance states that in these applications, statelessness is relevant in determining the country of last habitual residence for establishing certain elements of asylum, including analyzing past and future persecution and in establishing identity. If you are stateless and applying for asylum, you should list "STATELESS" as your country of citizenship or nationality in your application.

You should contact an experienced immigration attorney to understand exactly how this guidance affects your case.

- [I am preparing an application for an immigration benefit from USCIS. How do I take advantage of these changes?](#)

If you believe you might be stateless, or if you have evidence that proves you are stateless, you should include this information in your application. Make it clear that you have indications of stateless status. You should write "STATELESS" in the part of the form where it asks for your nationality or citizenship. You can also include a cover letter and explain your statelessness, and any documents you have that prove you are stateless. This will help trigger USCIS to initiate its internal statelessness determination review. Making your statelessness a clear and prominent fact can help improve your chances of a positive outcome in your case.

For specific case advice, contact an experienced immigration attorney.

- [I already have an application pending before USCIS and now I want them to consider my statelessness. What should I do?](#)

It is possible to update a pending application before USCIS with more evidence. However, it is not always simple to do so. Many applications are transferred between various offices throughout the country, and the applicant is not always made aware of which office is reviewing the case. If you want to submit new evidence in your case, especially to introduce evidence that you are stateless, be sure you are sending the evidence to the correct USCIS office. Always include your A number on every page. Always include the corresponding USCIS Receipt Number which is connected to your application. Always make copies of everything you submit. Do not send original documents unless USCIS specifically asks you to do so.

Frequently, USCIS will send a Request for Evidence, which is a letter that USCIS sends the applicant asking for additional evidence for an application. The Request for Evidence letter will explain what evidence is needed and why. Responding to a Request for Evidence is also a good opportunity to submit other relevant evidence that is not specifically requested by USCIS (for example, evidence of your statelessness) because it is sure to go to the correct office and be reviewed in a timely manner. Additionally, many USCIS applications require an in-person interview. The in-person interview is a good opportunity to provide new and additional evidence in the application.

Contact an experienced immigration attorney for help on how best to address adding new evidence to an existing application.