Report for Congress
LL File No. 2017-015446

Laws Concerning Children of Undocumented Migrants in Selected Countries

September 2017

The Law Library of Congress, Global Legal Research Center
(202) 707-6462 (phone) • (866) 550-0442 (fax) • law@loc.gov • http://www.law.gov

Contents

Comparative Summary 1

Argentina.....3

Australia.....6

Brazil.....8

Canada.....13

China.....18

European Union 22

France.....24

Germany.....28

India 35

Israel.....39

Italy 45

Japan 49

Mexico 53

Russia.....57

Saudi Arabia.....60

South Africa 62

Sweden.....66

Turkey.....74

United Kingdom.....79

Comparative Summary

Peter Roudik
Assistant Law Librarian for Legal Research

This report by the Law Library of Congress surveys the laws of twenty jurisdictions (the European Union and selected major economically developed countries, representing all continents and geographic regions of the world) related to the treatment of undocumented migrants who arrived as minors, their eligibility for obtaining legal status and access to social benefits, and their possibilities for becoming citizens. Additionally, all country surveys provide a general overview of national migration legislation, and past amnesty programs are reviewed to illustrate national efforts in resolving problems involving the legalization of undocumented youth. In defining undocumented migrants and those minors who arrived in the country outside the boundaries of the regular migration process, each country report follows definitions used in the specific country's legislation to define those who illegally enter, stay, and work in the country.

The laws of the majority of the countries included in this report do not provide for legal status or a pathway to citizenship for the children of undocumented persons, and consider those who entered the country illegally inadmissible in general. However, many countries are more lenient in regard to providing opportunities to stay and work for those who were born inside the country or were brought to the country as a child by illegal migrant parents—a policy declared by a 1954 ruling of the Argentinian Supreme Court, which stated that if "the applicant entered the country as a minor, he could not be responsible for noncompliance with immigration norms."

No country included in the report has special programs that would establish a direct path to citizenship for the children of undocumented migrants; however, many of them undertake efforts aimed at regularizing the legal status of young migrants. The report demonstrates a variety of approaches to dealing with young people who do not have documentation to prove that they are in the country legally. These approaches range from detention and deportation (Saudi Arabia), to subjecting them to the general immigration and citizenship acquisition rules (Italy), to providing opportunities to obtain residency permits that would allow them to live and work in the country. Depending on their age and length of presence in the country, a temporary stay and deferred enforcement of immigration laws may be granted to those who entered the country at a relatively young age and meet other specific requirements (Germany, France). Even when those who have overstayed their visas or have entered the country illegally are considered inadmissible, temporary resident permits may be granted under exceptional circumstances (Canada, Mexico, United Kingdom). Some countries (Russia, South Africa) have introduced programs for the legalization of migrants who are working illegally, but these programs are limited to migrants from particular countries of origin. A comprehensive program for the legalization of certain undocumented persons who arrived as children existed in Australia during the mid-1990s to November 2005, but was cancelled due to abuse of the program by some participants. Other Australian programs were also short-lived because they were initiated by executive ministries and did not have parliamentary approval. While some countries prohibit the naturalization of illegal migrants at all (India), a pathway to citizenship is foreseen in the laws of others.

However, no country appears to grant citizenship to the children of undocumented migrants automatically and requires legalization of status and meeting other requirements for naturalization.

The report illustrates that most of the countries surveyed allow undocumented migrants to receive access to public health care and education. The details of each country's governing laws are provided in the individual country surveys.

Argentina

Graciela Rodriguez-Ferrand
Senior Foreign Law Specialist

SUMMARY Argentina does not have a program for children of irregular migrants equivalent to the US DACA program. However, such children have access to health, education, and social benefits while their regularization process is underway. The minor children of irregular migrants have access to Argentine citizenship upon meeting legal requirements.

I. Introduction

Argentina does not have a special program for children of irregular migrants similar to the US DACA program. Children with irregular immigration status are subject to the general legal regime applicable to all irregular migrants, which grants them the right to health care and education while their regularization is processed.

II. Irregular Migrants

The immigration enforcement authority is the Dirección Nacional de Migraciones (DNM) (National Directorate on Migration), which issues entry permits, residence permits, and changes of status, and applies sanctions in case of violations of the Law on Migration 25871.[1] According to the Law on Migration, once the DNM verifies an irregular immigration status, the DNM orders the foreigner to regularize his or her situation within a specified deadline, under penalty of expulsion.[2] If the deadline expires with no regularization, the DNM orders expulsion from the country, an order that is subject to appeal before a court.[3]

Once a petition for residence is filed, the applicant may be granted a temporary residence authorization for ninety days, renewable for as long as the application process lasts, allowing the applicant to stay, leave, and re-enter the country, and to work and study while the authorization is valid.[4] If admission is denied or a determination of irregular status is appealed, a temporary stay permit may be issued for ninety days, renewable until a decision on the appeal is rendered, allowing the applicant to stay, study, and work in the country while the permit is valid.[5]

Foreigners with an irregular immigration status are not allowed to work legally in the country[6] and employers of irregular migrants are subject to fines.[7] However, irregular migrant workers

[1] Ley 25871 on Migration, Dec. 17, 2003, art. 107, BOLETIN OFICIAL [BO], Jan 21, 2004, http://servicios.infoleg.gob.ar/infolegInternet/anexos/90000-94999/92016/texact.htm, *archived at* https://perma.cc/SC32-RMNE.

[2] *Id*. art. 61.

[3] *Id*.

[4] *Id*. art. 20.

[5] *Id*. art. 20 *bis*.

[6] *Id*. art. 53.

have all labor law protections regardless of their immigration status.[8] They also have full education, health care, and social assistance rights.[9] (The government grants legal migrants and their families equal access to social and public services and facilities, health, education, justice, employment, and social security, the same as Argentine nationals.[10])

Irregular migrants who entered the country through unofficial points of entry or by evading immigration controls are subject to expulsion from the country.[11] In order to purge their clandestine entry, they must leave and re-enter the country through an authorized port of entry.[12]

III. Path to Citizenship for Irregular Migrants

Under the Argentine Constitution[13] anyone born in Argentina is an Argentine national, regardless of the nationality of the parents.[14] Argentina follows primarily the principle of *jus soli*,[15] but also embraces the principle of *jus sanguinis* by granting Argentine nationality to the child of an Argentine national who was born abroad and opts for such nationality.[16]

In order to acquire Argentine nationality through naturalization, an applicant must be eighteen years of age or older and have resided in Argentina either as permanent or temporary resident for two years before submitting the naturalization petition and expressing the will to do so before a judge.[17] The residency requirement has been interpreted as legal residency, which must be proved through a certification issued by the DGM.[18]

The Supreme Court ruled in a 1954 case that when the applicant entered the country as a minor, he could not be responsible for noncompliance with immigration norms, and therefore could not

---

[7] *Id*. art. 59.

[8] *Id*. art. 56.

[9] *Id*. arts. 7 & 8.

[10] *Id*. art. 6.

[11] *Id*. arts. 29 K & 37.

[12] Silvana Begala, *Migrantes en Argentina: Inclusión Diferencial y Ciudadanías Jerarquizadas*, ANUARIO DEL CIJS 771–72 (2012), https://ddd.uab.cat/pub/caplli/2014/168590/Anuario-CIJS-2012_migrantesargentina.pdf, *archived at* https://perma.cc/6RP4-78EW.

[13] NATIONAL CONSTITUTION [CN], Aug. 22, 1994, art. 20, http://servicios.infoleg.gob.ar/infolegInternet/anexos/0-4999/804/norma.htm, *archived at* https://perma.cc/H9NT-Q3GF .

[14] Ley 346 Ley de Nacionalidad [Law on Nationality], Oct. 1, 1869, *as amended by* Decreto 70/2017, BO Jan. 30, 2017, art. 1.a, http://servicios.infoleg.gob.ar/infolegInternet/anexos/45000-49999/48854/texact.htm, *archived at* https://perma.cc/HW2U-HR27.

[15] CN art. 75.12.

[16] Ley de Nacionalidad art. 1.2.

[17] *Id*. art. 2.1.

[18] MARIO OYARZABAL, LA NACIONALIDAD ARGENTINA 23–24 (Buenos Aires, 2003).

be denied Argentine nationality on the basis that he could not prove that he entered the country through legal means.[19]

Applicants may be exempted from the two-year residency requirement if they have enrolled and rendered services in the Armed Forces of Argentina.[20]

[19] Fallos Corte Suprema de Justicia de la Nación (CSJN) 230:244, 1954 Barrios, Manuel s/ Naturalización y Ciudadanía, *in id*. at 24.

[20] Ley de Nacionalidad art. 2.2.2.

Australia

Luis Acosta
Chief, Foreign, Comparative, and International Law Division II

SUMMARY Among Australia's limited efforts at regularizing undocumented immigration was a special visa category for "innocent illegal migrants" who lost legal status prior to turning eighteen, spent their "formative years" in Australia, and were separated from the family with whom they entered the country. The government terminated this program in 2005.

I. Introduction

Australia's immigration and border protection policies are based on a visa system in which noncitizens lacking a visa are deemed unlawfully present and must either obtain a proper visa, leave the country, or be subject to detention.[1] Australia's refugee and humanitarian program is also structured as a visa system.[2]

With regard to citizenship of children who were born in Australia, prior to August 20, 1986, such children automatically became Australian citizens. Children who were born in Australia on or after August 20, 1986, are automatically citizens only if they have at least one parent who is an Australian citizen or permanent resident. Children born in Australia who do not have at least one parent who is an Australian citizen or permanent resident but who spend the first ten years of their life in Australia are also deemed Australian citizens.[3]

II. Regularization Efforts

Australia has had only limited experience using regularization programs to address undocumented immigration. In 1980, a six-month initiative called the Regularization of Status Programme allowed persons without permanent resident status who were present either legally or illegally to apply for such status. Applicants had to meet health and character requirements, provide background documentation, and be interviewed by government personnel. While the program was considered a relative success, a 1981 amendment stipulated that any future regularization program would have to have parliamentary rather than mere ministerial approval.[4]

---

[1] *See generally* KELLY BUCHANAN, LAW LIBRARY OF CONGRESS, CITIZENSHIP PATHWAYS AND BORDER PROTECTION: AUSTRALIA (2013), https://www.loc.gov/law/help/citizenship-pathways/australia.php, *archived at* https://perma.cc/G5WP-MJFY.

[2] KELLY BUCHANAN, LAW LIBRARY OF CONGRESS, REFUGEE LAW AND POLICY: AUSTRALIA (2016), https://www.loc.gov/law/help/refugee-law/australia.php, *archived at* https://perma.cc/8CE8-GQTZ.

[3] Australian Government Department of Immigration and Border Protection, Evidence of Australian Citizenship—Eligibility, http://www.border.gov.au/Trav/Citi/Curr/evidence-of-australian-citizenship/eligibility (last visited Sept. 15, 2017), *archived at* https://perma.cc/E33H-7KDC.

[4] HOUSE COMM. ON THE JUDICIARY, 99TH CONG., 1ST SESS., IMPACT OF ILLEGAL IMMIGRATION AND BACKGROUND ON LEGALIZATION: PROGRAMS OF OTHER COUNTRIES 154–57 (Comm. Print 1985).

A limited provision for regularization applied only to certain undocumented persons who arrived in Australia as children. During the mid-1990s to November 2005, Australia had a special visa category for "innocent illegal" migrants who were separated from the family with whom they entered; the program enabled them to obtain permanent residence after turning eighteen.[5] A covered "innocent illegal" was

> someone who [wa]s over the age of 18, ceased to hold a substantive visa (ie became an 'unlawful non-citizen') before he or she turned 18, and [was] determine[d to have] had, before turning 18, spent the greater part of his or her 'formative years' in Australia. In addition, the applicant must not [have been] a member of, nor live[d] with, the family with whom they entered Australia. Finally, they must not have held a transit visa immediately before becoming an unlawful non-citizen.[6]

The determination regarding whether the migrant spent his or her "formative years" in Australia turned on whether the person spent the greater part of his or her life between the ages of five and eighteen in Australia, or, if not, on the person's particular circumstances, taking into account where the person spent his/her adolescence, formed a sense of identity, had a connection with a place in the world, or absorbed his/her background culture.[7]

Although the number of visas granted under this category was relatively small, the government reportedly came to view the program as subject to abuse because of "young people purportedly leaving their family temporarily in order to qualify for the visa only to return to live with them once they received a permanent visa."[8] The program was ended in November 2005.[9]

---

[5] MARY CROCK & LAURIE BERG, IMMIGRATION, REFUGEES AND FORCED MIGRATION: LAW, POLICY AND PRACTICE IN AUSTRALIA 221 (2011).

[6] Parliament of Australia, Parliamentary Library, Bills Digest No. 58 1996-97: Student and Youth Assistance Amendment (Waiting Period) Bill 1996, n. 8 (Nov. 22, 1996), http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/bd/BD9697/97bd058, *archived at* https://perma.cc/ZG25-JSPY.

[7] JOHN VRACHNAS ET AL., MIGRATION AND REFUGEE LAW: PRINCIPLES AND PRACTICE IN AUSTRALIA 149 (2005).

[8] CROCK & BERG, *supra* note 5, at 221 n.81.

[9] *Id*. at 221.

Brazil

Eduardo Soares
Senior Foreign Law Specialist

SUMMARY Constitutional principles grant rights and duties to aliens living in the country. Federal law regulates immigration issues in general, and an immigration agency subordinated to the Ministry of Labor is in charge of immigration policies. Citizenship is acquired by birth on Brazilian soil and through naturalization or a continuous period of residence in the country. The federal government, through the Federal Police, is in charge of enforcing immigration laws. Brazil recently enacted a new immigration law that will enter into force in November 2017.

I. Constitutional Principle

According to the Brazilian Constitution, everyone is equal before the law with no distinction whatsoever, guaranteeing to Brazilians and foreigners residing in the country the inviolability of the rights to life, liberty, equality, security, and property, according to the terms defined in article 5 of the Constitution.[1] Article 22 grants to the federal government (*União*) the exclusive power to legislate, inter alia, on nationality, citizenship, and naturalization,[2] as well as on the "emigration, immigration, entry, extradition, and expulsion of foreigners."[3] A child born in Brazil to foreign nationals is considered a Brazilian citizen, provided that the parents are not employed in the service of their country.[4] Extraordinarily, Brazilian citizenship can also be obtained upon request if a person has continuously resided for more than fifteen years in Brazil and does not have any criminal conviction.[5]

II. Law No. 6,815 of August 19, 1980

A. General Provisions

Law No. 6,815 of August 19, 1980, defines the legal situation of foreigners in Brazil, while Decree No. 86,715 of December 10, 1981, regulates all immigration matters concerning Law No. 6,815 and created the National Council of Immigration (Conselho Nacional de Imigração—CNIg). The CNIg is subordinate to the Ministry of Labor, and is the government body in charge of immigration matters.[6]

---

[1] CONSTITUIÇÃO FEDERAL art. 5, http://www.planalto.gov.br/ccivil_03/Constituicao/Constituicao.htm, *archived at* https://perma.cc/F2VM-23VE.

[2] *Id*. art. 22(XIII).

[3] *Id*. art. 22(XV) (all translations by author).

[4] *Id*. art. 12(I)(a).

[5] *Id*. art. 12(II)(b).

[6] *Id*. art. 142.

In order to travel to and enter Brazilian territory, an alien needs a visa, and visas fall into one of the following categories: transit, tourist, temporary, permanent, courtesy, official, and diplomatic.[7] An alien under the age of eighteen, unaccompanied by his legal representative or without express authorization, cannot obtain a visa.[8]

An alien who illegally enters or irregularly stays in Brazil and does not depart voluntarily is subject to deportation.[9] At the request of the Minister of Justice, the alien may be imprisoned for sixty days until the deportation is put into effect.[10] The Federal Police is the competent agency that arrests[11] and deports aliens.[12]

Whenever requested by the authorities, an alien must show proof of legal immigration status in the Brazilian territory.[13]

B. Acquisition of Citizenship

In order to apply for Brazilian citizenship, an alien must satisfy certain conditions.[14] The alien

(I) must have civil capacity[15] according to Brazilian law;

(II) must be registered as a permanent alien in Brazil;

(III) must be in continuous residence in Brazilian territory for at least four years immediately before applying for citizenship;

(IV) must read and write the Portuguese language, evaluated on the basis of the social and intellectual situation of the applicant;

(V) must practice a profession or have enough possessions to guarantee his and his family's maintenance;

---

[7] ESTATUTO DO ESTRANGEIRO, Lei No. 6.815, de 19 de Agosto de 1980, art. 4, http://www.planalto.gov.br/ccivil_03/Leis/L6815compilado.htm, *archived at* https://perma.cc/A3XZ-VU5C.

[8] *Id.* art. 7(I).

[9] *Id.* arts. 57, 125(I).

[10] *Id.* art. 61.

[11] Decreto No. 86.715, de 10 de Dezembro de 1981, art. 110(I), http://www.planalto.gov.br/ccivil_03/decreto/antigos/d86715.htm, *archived at* https://perma.cc/644A-6JU2.

[12] *Id.* art. 98(§1).

[13] *Id.* art. 96.

[14] Lei No. 6.815, art. 112.

[15] Article 5 of the Brazilian Civil Code (CÓDIGO CIVIL, Lei No. 10.406, de 10 de Janeiro de 2002, http://www.planalto.gov.br/ccivil_03/LEIS/2002/L10406.htm, *archived at* https://perma.cc/Q4R2-FPPH) determines that minority ceases at the completion of eighteen years of age, when the person is then fully capable of practicing all acts of civil life. Paragraph 1 of article 5 further establishes that a minor's incapacity may also cease by the concession of the parents, or one of them in the absence of the other, through a public instrument, independently of judicial sanction or judicial decision of a sixteen year-old minor (*Id.* art. 5(§1)(I).); by marriage (*Id.* at II); effective exercise of public employment (*Id.* at III); graduation from an institution of higher education (*Id.* at IV); commercial or civil establishment, or the existence of an employment relationship that provides a sixteen-year-old minor with economic support. *Id.* at V.

(VI) must have good behavior;

(VII) cannot have been indicted or convicted in Brazil or abroad for a felony; [and]

(VIII) must be in good health[.][16]

The four-year residence requirement may be reduced to three years if the alien possesses real estate or an enterprise in Brazil; to two years because of the alien's professional, scientific, or artistic abilities; and to one year if the alien has a Brazilian spouse, a Brazilian child, a Brazilian parent, or has performed a relevant service to Brazil.[17]

The application for naturalization is filed with the local agency of the Department of Federal Police,[18] which is subordinate to the Ministry of Justice, and must indicate whether the applicant intends to have his name translated or adapted to the Portuguese language. The application must also include the documents listed in article 119 of Decree Law No. 86,715 of December 10, 1981.[19]

An alien who is admitted to Brazil by the age of five and permanently lives in the country may, within two years after reaching adulthood, apply for naturalization.[20]

A foreigner admitted to Brazil during the first five years of his life and who permanently lives in the country may, while still a minor, require through his legal representative the issuance of a provisional certificate of naturalization.[21] An alien who is the holder of such a provisional certificate of naturalization and wants to confirm his intention to continue to be a Brazilian citizen must manifest such intention to the Minister of Justice within two years after reaching majority.[22]

A foreigner who comes to reside in Brazil before reaching the age of majority and has obtained a degree from a national institution of higher education may, within one year after graduation, apply for naturalization.[23]

---

[16] All translations are by the author.

[17] Lei No. 6.815, art. 113.

[18] Decreto No. 86.715, *supra* note 11, art. 125.

[19] *Id*. art. 119.

[20] *Id*. art. 120.

[21] *Id*. art. 121.

[22] *Id*. art. 122.

[23] *Id*. art. 123.

III. New Immigration Law No. 13,445

A. General Provisions

On May 24, 2017, Brazil promulgated Law No. 13,445, a new migration law that provides for the rights and duties of migrants and visiting aliens, regulates their entry and stay in the country, and establishes principles and guidelines for public policies for emigrants.[24] Article 124(I) of Law No. 13,445 revokes Law No. 6,815, which had focused on the country's national security. According to article 3 of Law No. 13,445 the migratory policy of Brazil is governed by, inter alia, noncriminalization of migration; nondiscrimination due to the criteria or procedures by which the person was admitted into the national territory; integral protection and attention to the superior interest of the migrant child and adolescent; and repudiation of collective deportation or deportation practices. As was the case with Law No. 6,815, an alien under the age of eighteen, unaccompanied or without written authorization from his or her legal representative, cannot obtain a visa.[25]

To enter the national territory without authorization is considered a violation and subjects the offender who does not leave the country, or does not regularize his or her migratory situation within the established period of time, to deportation.[26] Persons who remain in national territory after the expiration of the legal term of their immigration documentation are also subject to deportation and a daily fine.[27] Law No. 13,445 will enter into force on November 21, 2017.[28] Regulations for Law No. 13,445 have yet to be enacted.

B. Acquisition of Citizenship

Under the new law, naturalization can be ordinary, extraordinary, special, or provisional.[29] Ordinary naturalization will be granted to the alien who

(I) has civil capacity according to Brazilian law;

(II) has residency in Brazilian territory for at least four years;

(III) communicates in the Portuguese language, considering the situation of the applicant;

(IV) does not have a criminal conviction or has been rehabilitated.[30]

---

[24] Lei No. 13.445, de 24 de Maio de 2017, art. 1, http://www.planalto.gov.br/ccivil_03/_Ato2015-2018/2017/Lei/L13445.htm, *archived at* https://perma.cc/L6A5-JJFQ.

[25] *Id*. art. 7(I).

[26] *Id*. art. 109(I).

[27] *Id*. art. 109(II).

[28] *Id*. art. 125.

[29] *Id*. art. 64.

[30] *Id*. art. 65.

The four-year requirement may be reduced to at least one if the applicant

(I) [vetoed];

(II) has a Brazilian child;

(III) has a Brazilian spouse or partner and is not separated legally or in fact at the moment of granting naturalization;

(IV) [vetoed];

(V) has provided or could provide a relevant service to Brazil; or

(VI) is recommended [for a reduction] due to his or her professional, scientific, or artistic capacity.[31]

Extraordinary naturalization may be granted to a person of any nationality who is established (*fixada*) in Brazil for more than fifteen years without interruption and without a criminal conviction, provided that he or she requires Brazilian nationality.[32]

Provisional naturalization may be granted to a migrant child or adolescent who has established residence in the national territory before completing ten years of age, and must be requested through his or her legal representative.[33] The provisional naturalization may be converted to definitive naturalization if the applicant expressly requires it within two years after reaching the age of majority.[34]

IV. Programs or Policy

CNIg has not created any special government program or policy granting enforcement relief to undocumented immigrants who arrived as minors.

[31] *Id*. art. 66.

[32] *Id*. art. 67.

[33] *Id*. art. 70.

[34] *Id*. art. 70(sole para.)

Canada

Tariq Ahmad
Foreign Law Specialist

SUMMARY There are a number of persons who are considered inadmissible in Canada, including failed refugee claimants, individuals who have overstayed their visas, and individuals who have entered the country illegally. Currently there is no dedicated program to grant the children of undocumented persons legal status or a pathway to citizenship. However, in exceptional circumstances and at the discretion of the government, it appears that undocumented immigrants may be granted legal status through either temporary resident permits or permanent residency on humanitarian and compassionate grounds.

In the past there have been instances where programs were established to regularize undocumented immigrants, the largest of which was the 1973 Adjustment of Status Program.

I. Introduction

Immigration to Canada is predominantly regulated by the Immigration and Refugee Protection Act, 2001 (IRPA),[1] and nationality is governed by the Citizenship Act.[2] Under the law, there are a number of pathways to citizenship, namely through birth, descent, adoption, and naturalization of permanent residents.

Canada accepts several categories of immigrants for permanent residence. According to Immigration, Refugees and Citizenship Canada (IRCC), "[a] permanent resident is someone who has been given permanent resident status by immigrating to Canada, but is not a Canadian citizen."[3] In addition to economic-class immigrants (skilled workers, entrepreneurs, including provincial nominees, investors, etc.), it admits specified family members and adopted children under the family class category, refugees, and others not falling into these specific categories who qualify for entry on humanitarian or compassionate grounds or for public policy reasons.[4]

Although there are no official statistics or census figures on the number of illegal immigrants in Canada, some estimate that there may be between 50,000 and 200,000[5] (some estimates go up to

[1] Immigration and Refugee Protection Act, S.C. 2001, c. 27 http://laws.justice.gc.ca/eng/acts/i-2.5/FullText.html, *archived at* https://perma.cc/6HM9-WWPR.

[2] Citizenship Act, R.S.C. 1985, c. C-29, http://laws.justice.gc.ca/eng/acts/C-29/FullText.html, *archived at* https://perma.cc/JG2L-B39K.

[3] *Understand Permanent Resident Status*, IMMIGRATION, REFUGEES AND CITIZENSHIP CANADA, http://www.cic.gc.ca/english/newcomers/about-pr.asp (last updated June 9, 2017), *archived at* https://perma.cc/HW39-XXJH.

[4] *Permanent Resident Program*, IMMIGRATION, REFUGEES AND CITIZENSHIP CANADA, http://www.cic.gc.ca/english/resources/tools/perm/index.asp (last updated Feb. 6, 2017), *archived at* https://perma.cc/8DSW-45GH.

[5] *Immigration Policy in Canada*, HISTORICA CANADA, http://www.thecanadianencyclopedia.ca/en/article/immigration-policy/ (last updated June 29 2017), *archived at* https://perma.cc/RQQ6-2Z4P.

500,000[6]) undocumented workers living in the country. The IRPA does not specifically criminalize unlawfully entering the country or unlawfully overstaying a visa. Both of these types of actions, however, fall under the general prohibition against contravening the law without exercising due diligence to prevent doing so.[7] While the IRPA does provide for the prosecution of persons who enter the country illegally or illegally overstay a visa, trials for these offenses are rare. Most persons caught violating the general provisions of the immigration laws are deported or ordered to be removed.

II. Pathway to Legal Status for Children of Undocumented Immigrants

There are a number of persons who are considered inadmissible in Canada, including failed refugee claimants, individuals who have overstayed their visas, and individuals who have entered the country illegally. Currently there is no dedicated program to grant the children of undocumented persons legal status or a pathway to citizenship.[8]

There may be options for certain individuals with no status to be granted status, but only in exceptional circumstances. If a person is inadmissible but has a reason to stay or travel to Canada "that is justified in the circumstances," he or she may apply for a temporary resident permit.[9] To be eligible for this permit the person's "need to enter or stay in Canada must outweigh the health or safety risks to Canadian society," which is determined by an immigration or border services officer. There is no guarantee a person will be issued a temporary resident permit.[10]

Persons who would not normally be eligible to become permanent residents of Canada may be able to apply on humanitarian and compassionate grounds.[11] Factors that are considered include

- how settled the person is in Canada
- general family ties to Canada
- the best interests of any children involved, and
- what could happen to the person if the request is refused.[12]

---

[6] Levon Sevunts, *Irregular Immigration – Canada's Ghost Immigrants*, RADIO CANADA INTERNATIONAL, http://www.rcinet.ca/immigration-en/2017/03/08/irregular-immigration-canadas-ghost-immigrants/ (last visited Sept. 28, 2017), *archived at* https://perma.cc/F97U-Z2V4.

[7] Immigration and Refugee Protection Act, S.C. 2001 c. 27, § 124(1)(a).

[8] Vince Wong, *Canada Has Done Even Less For Its 'Dreamers' Than the U.S.*, HUFFINGTON POST CANADA BLOG (Sept. 11, 2017), http://www.huffingtonpost.ca/vince-wong/canada-has-done-even-less-for-its-dreamers-than-the-u-s_a_23202268/, *archived at* https://perma.cc/DSC3-4STX.

[9] Immigration and Refugee Protection Act § 24.

[10] *Temporary Resident Permits*, IMMIGRATION, REFUGEES AND CITIZENSHIP CANADA, http://www.cic.gc.ca/english/information/inadmissibility/permits.asp (last updated June 9, 2017), *archived at* https://perma.cc/NZV6-8XPK; *Temporary Residents: Overview*, IMMIGRATION, REFUGEES AND CITIZENSHIP CANADA, http://www.cic.gc.ca/english/resources/tools/temp/overview.asp (last updated Aug. 1, 2015), *archived at* https://perma.cc/GFV8-WMXC.

[11] Immigration and Refugee Protection Act § 25.

[12] *Humanitarian and Compassionate Grounds*, IMMIGRATION, REFUGEES AND CITIZENSHIP CANADA, http://www.cic.gc.ca/english/refugees/inside/h-and-c.asp, *archived at* https://perma.cc/Y52S-KPB2; *see also Guide 5291 –*

A number of other rules apply to this application, including that an applicant "cannot apply for humanitarian and compassionate grounds if [he/she] had a negative decision from the IRB [Immigration and Refugee Board of Canada] within the last 12 months. This is called the 'one year bar.' "[13]

According to a 2012 article by immigration lawyer Shelley Levine, immigration authorities understand that if a large number of applicants "were to make Humanitarian and Compassionate applications, and were to be accepted it would amount to a general amnesty. No such amnesty is contemplated," and therefore only a relatively small number of applications are accepted each year.[14]

III. Undocumented Migrants and Citizenship

Similar to the United States, persons born in Canada are generally granted citizenship.[15] The only exception is children of foreign diplomats, who are not granted Canadian citizenship even if they are born in Canada.[16] Therefore, the children of undocumented migrants who are born in Canada are granted citizenship.

According to IRCC, in order to be eligible for Canadian citizenship through naturalization, a person must meet certain requirements related to

- Permanent Resident status
- Time [the applicant has] lived in Canada
- Income tax filing
- Language skills
- How well [the applicant knows] Canada [and]
- Prohibitions[17]

Humanitarian and Compassionate Considerations, IMMIGRATION, REFUGEES AND CITIZENSHIP CANADA, http://www.cic.gc.ca/english/information/applications/guides/5291ETOC.asp (last updated Aug. 31, 2017), *archived* at https://perma.cc/M4HD-V5KB.

[13] *Humanitarian and Compassionate Grounds*, *supra* note 12.

[14] Shelley S. Levine, *Humanitarian and Compassionate Applications*, LEVINE ASSOCIATES (Aug. 6, 2012), http://www.levlaw.com/humanitarian-and-compassionate-applications/, *archived at* https://perma.cc/4PYV-G5BC.

[15] Citizenship Act § 3(1)(a).

[16] Id. § 3(2).

[17] *Find Out if You're Eligible: Citizenship*, IMMIGRATION, REFUGEES AND CITIZENSHIP CANADA, http://www.cic.gc.ca/english/citizenship/become-eligibility.asp (last updated June 20, 2017), *archived at* https://perma.cc/T8WX-D9MR.

In order to become a Canadian citizen, a person's permanent resident (PR) status in Canada must also "not be in question."[18] This means he or she must not

- be under review for immigration or fraud reasons
- have certain unfulfilled conditions related to [his/her] PR status
- be under a removal order (an order from Canadian officials to leave Canada)[19]

IV. Examples of Past Amnesty Programs

Since the 1960s, Canada has implemented a number of "regularization" programs, which have been described as effectively being amnesty programs, to regularize undocumented persons. The Chinese Adjustment Statement Program is considered the first formal regularization program in Canada, which regularized around 12,000 people. This program allowed for "Chinese migrants who came to Canada without status documents, or with the documents of a relative of a Canadian citizen (commonly referred to as 'Paper Sons'), to apply for permanent residency."[20] Applicants to the program "needed to demonstrate that they were of 'good moral character' and were not involved in the 'industry' of 'illegal immigration.' "[21]

In 1973, the Trudeau government established the Adjustment of Status Program,[22] which historically is considered the "largest regularization in Canada to date," and "regularized about 39,000 people from over 150 countries in a two-month period."[23] Persons who had been living in Canada with or without a legal immigration status since November 30, 1972, were given sixty days to apply for adjustment of status.[24] Immigration officers who interviewed the aliens "retained discretion to grant landed immigrant status."[25] Factors considered were economic stability, family relationships, and humanitarian reasons.[26]

---

[18] *Id*.

[19] *Id*.

[20] Jean McDonald, *Migrant Illegality, Nation Building, and the Politics of Regularization in Canada*, 26(2) REFUGE: CANADA'S JOURNAL ON REFUGEES 65, 66 (2009), https://refuge.journals.yorku.ca/index.php/refuge/article/download/32079/29325, *archived at* https://perma.cc/D6BZ-WFL9.

[21] *Id*.

[22] DESMOND SLORER ET AL., CENTER FOR MIGRATION STUDIES, AMNESTY FOR UNDOCUMENTED MIGRANTS: THE EXPERIENCE OF AUSTRALIA, CANADA AND ARGENTINA 11 (1977), http://cmsny.org/wp-content/uploads/2016/02/Storer-et-al-Amnesty-for-Undocumented-Migrants.pdf, *archived at* https://perma.cc/QEY7-LKX4.

[23] Memo to Community Development and Recreation Committee to Executive Director, Social Development, Finance & Administration, Undocumented Workers in Toronto 7 (Oct. 22, 2012), http://www.toronto.ca/legdocs/mmis/2013/cd/bgrd/backgroundfile-55291.pdf, *archived at* https://perma.cc/Z4NK-NY3R.

[24] VALERIE KNOWLES, STRANGERS AT OUR GATES: CANADIAN IMMIGRATION AND IMMIGRATION POLICY, 1540–2015 (Toronto: Dundurn, 2016).

[25] Juan P. Osuna, *Amnesty in the Immigration Reform and Control Act of 1986: Policy Rationale and Lessons from Canada*, 3(1) AM. U. INT'L L. REV. 145, 168 (1988), http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1620&context=auilr, *archived at* https://perma.cc/4HEM-VCQY.

[26] THE REGULARIZATION OF NON-STATUS IMMIGRANTS IN CANADA 1960–2004: PAST POLICIES, CURRENT PERSPECTIVES, ACTIVE CAMPAIGNS (Nov. 2004), http://accessalliance.ca/wp-content/uploads/2015/03/Regularization-Report.pdf, *archived at* https://perma.cc/9UJ3-SSAM.

From 1994 to 1998, the Deferred Removals Order Class (DROC) regularized "several thousand failed refugee claimants who had remained in Canada for three years or more without a removal order."[27] According to one scholar, "[r]efused claimants were generally stuck 'in limbo' because they were from moratorium countries. Approximately 3,000 applicants from China, Iran, and other countries were regularized through this program, but many more were rejected because they did not meet residency requirements, or had criminal records or serious medical conditions."[28]

[27] McDonald, *supra* note 20, at 67.

[28] *Id*.

China

Laney Zhang
Foreign Law Specialist

SUMMARY China does not appear to have a program specifically providing the children of foreigners who illegally enter, stay, or work in China a pathway to citizenship or legal residence. Under the nationality law, a child born in China is a Chinese citizen only if at least one of his or her parents is a Chinese citizen, or if his or her parents are settled in China and the parents are stateless or their nationalities cannot be determined. Naturalization is possible under the law, but in practice naturalization may be rare other than through marriage or a great contribution to the country. Unmarried children of Chinese citizens and permanent residents may apply for permanent residency in China; such children must be under the age of eighteen.

Foreigners illegally entering, staying, or working in China may be deported. Those who illegally enter, stay, or work in China may also be fined. Guardians or other persons responsible for guardianship may be fined if they fail to perform the obligations of a guardian and cause a foreign child under the age of sixteen to reside in China illegally.

Chinese law on refugees and asylum is still being developed. Effective July 1, 2013, the new Exit and Entry Law allows refugees and asylum seekers to obtain ID cards, a step deemed to lay a foundation for future enhancement of refugees' rights to work and obtain an education in China. In November 2013, it was reported that refugee children were allowed to attend public schools at the primary level as local children in five Chinese provinces.

I. Introduction

The People's Republic of China (PRC or China) is not a country that has traditionally attracted large numbers of immigrants. Although the rapid economic growth over the past three decades has brought in more foreigners than ever before, there is still no comprehensive immigration and nationality statute in place.

The primary law governing the acquisition and loss of Chinese citizenship is the PRC Nationality law adopted in 1980, which contains only seventeen general articles and has not been updated since its adoption.[1] Other than the Nationality Law, immigration issues are mainly governed by the PRC Law on the Administration of Exit and Entry (Exit and Entry Law), which entered into

[1] Zhonghua Renmin Gongheguo Guoji Fa [PRC Nationality Law] (adopted by the National People's Congress (NPC) on Sept. 10, 1980, and effective the same day), THE LAWS OF THE PEOPLE'S REPUBLIC OF CHINA (1979–1981) [LAWS OF CHINA 1979–81] 182–83, English translation available on the NPC website, *at* http://www.npc.gov.cn/englishnpc/Law/2007-12/13/content_1384056.htm, *archived at* https://perma.cc/T7MW-R7Z5.

effect in 2013.[2] Immigration provisions are also found in regulations; in particular, the rules on permanent residency were first officially introduced into Chinese law in 2004, when the Ministry of Public Security and the Ministry of Foreign Affairs jointly issued the Measures for the Administration of the Examination and Approval of Foreigners' Permanent Residence in China (Permanent Residence Measures).[3]

II. Citizenship and Permanent Residency

A. Citizenship

China does not appear to have a program specifically providing the children of foreigners who illegally enter, stay, or work in China a pathway to citizenship or legal residence. The nationality law basically follows the principle of *jus sanguinis*, under which a child born in China is a Chinese citizen only if at least one of his or her parents is a Chinese citizen, or if his or her parents are settled in China and the parents are stateless or their nationalities cannot be determined.[4]

Naturalization is possible under the Nationality Law, although the provisions are general and vague, and in practice naturalization may be rare other than through marriage or a great contribution to the country.[5] According to the Nationality Law, a foreign national or stateless person who is willing to abide by China's Constitution and laws and who is a close relative of Chinese nationals, has settled in China, or has "other legitimate reasons" to apply for naturalization, may be naturalized as a Chinese citizen upon approval of his application.[6]

B. Permanent Residency

Under the Permanent Residence Measures, unmarried children of Chinese citizens and permanent residents may apply for permanent residency in China; such children must be under the age of eighteen.[7] The Measures specify that the following foreigners and their spouses and children are eligible to apply for permanent residency in China:

---

[2] Zhonghua Renmin Gongheguo Chujing Rujing Guanli Fa [PRC Law on the Administration of Exit and Entry] (adopted by the NPC Standing Committee on June 30, 2012, effective July 1, 2013), available on the State Council website, *at* http://www.gov.cn/flfg/2012-06/30/content_2174944.htm, *archived at* https://perma.cc/XU29-HJKF.

[3] Waiguoren Zai Zhongguo Yongjiu Juliu Shenpi Guanli Banfa [Measures for the Administration of the Examination and Approval of Foreigners' Permanent Residence in China] (Permanent Residence Measures) (Order No. 74 of the Ministry of Public Security and Ministry of Foreign Affairs, Aug. 25, 2004), http://www.gov.cn/gongbao/content/2005/content_64214.htm, *archived at* https://perma.cc/AF2P-XZCD.

[4] *Id.* arts. 4 & 6.

[5] In recent years, many foreigners have obtained Chinese nationality in Hong Kong, where the Special Administrative Region (SAR) government has been accepting naturalization applications systematically since the establishment of the Hong Kong SAR in 1997. Press Release, News.gov.hk, LCQ2: Applications for Naturalisation as Chinese Nationals (Dec. 12, 2012), http://www.info.gov.hk/gia/general/201212/12/P201212120342.htm, *archived at* https://perma.cc/78GC-9B76.

[6] PRC Nationality Law art. 7.

[7] Permanent Residence Measures art. 6.

- Investors who have made direct investments in China with stable operations and good tax payment records for three successive years;
- Corporate executives, professors, and researchers who have held a post in China for at least four consecutive years, have been physically present in China for a minimum period of three cumulative years within the four years, and have good tax payment records; and
- Foreigners who have made great and outstanding contributions to China, and those who are especially needed by the country.[8]

III. Illegal Immigrants

The Exit and Entry Law places restrictions on foreigners who illegally enter, stay, or work in China. Such foreigners are rhetorically described as the "three illegals" foreigners (*san fei wai guo ren*) by the government.[9]

According to the Exit and Entry Law, foreigners illegally entering, staying, or working in China may be deported.[10] Those who have been ordered deported but cannot be deported immediately will be detained.[11] The Exit and Entry Law further specifies fines that may be imposed respectively on those who illegally enter, stay, or work in China.[12] Guardians or other persons responsible for guardianship may be subject to a fine of up to RMB1,000 (about US$150) if they fail to perform the obligation of a guardian and cause a foreign child under the age of sixteen to reside in China illegally.[13]

IV. Chinese Law on Refugees

China acceded to the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol in September 1982.[14] Despite its early accession to these treaties, the domestic law on refugees and asylum is still being developed. Currently, the only legal provisions relevant to refugees are one article in the Constitution providing the general principle on asylum, and one article in the Exit and Entry Law that gives legal status to refugees and asylum seekers. A comprehensive refugee law that would cover a wider range of refugee issues is under consideration.[15]

---

[8] *Id.*

[9] *Faxian "San Fei" Waiguo Ren Ying Jishi Baogao Gong'an Jiguan* [*Reporting "Three Illegals" Foreigners to the Public Security Organs*], NPC (July 2, 2012), http://www.npc.gov.cn/npc/xinwen/lfgz/lfdt/2012-07/02/content_1728557.htm, *archived at* https://perma.cc/5LZ2-B2QU.

[10] Exit and Entry Law art. 62.

[11] *Id*. art. 63.

[12] *Id*. arts. 71, 78, & 80.

[13] *Id*. art. 78.

[14] *UNHCR Regional Representation in China*, UNHCR (Mar. 10, 1999), http://www.unhcr.org/hk/en/134-china-2.html, *archived at* https://perma.cc/C573-RSBZ.

[15] LIU GUOFU, ZHONGGUO NANMIN FA [CHINESE REFUGEE LAW] 214–16 (2015).

Article 32 of the Constitution declares that China "may grant asylum to foreigners who request it for political reasons."[16] Effective July 1, 2013, the Exit and Entry Law contains a provision that, for the first time, allows refugees and asylum seekers to obtain ID cards in China. According to article 46 of the Exit and Entry Law, foreigners who apply for refugee status in China may, during the screening process, stay in China with temporary identity certificates issued by public security organs. Foreigners who are recognized as refugees may stay or reside in China with the refugee identity certificates issued by public security organs.[17]

Other than the above Constitution and the Exit and Entry Law provisions, there are no legal provisions specifically regulating the admission of refugees and handling of refugee claims under Chinese law. The refugee status determination is generally conducted by the United Nations High Commissioner for Refugees (UNHCR) Beijing Office and Chinese authorities have not substantially engaged themselves in the UNHCR process. Refugees are recognized under the UNHCR's mandate.[18] Nor is there an explicit, competent authority in charge of refugee affairs. The Ministry of Public Security should be responsible for matters relevant to refugee status recognition and repatriation of refugees, and the Ministry of Civil Affairs should attend to refugee resettlement, but no law explicitly authorizes them as the competent authorities.[19]

Refugees in China were generally treated as aliens who had no right to employment.[20] They were supported by the UNHCR in terms of food, accommodation, health care, and children's education.[21] Article 46 is deemed a positive first step in providing a legal ground for refugees to live in China. Recognizing that refugees and asylum seekers are entitled to ID cards, the law "lays a foundation for future enhancement of refugees' rights in China, such as the right to work and the right to education."[22] In November 2013, the UNHCR reported that refugee children in five Chinese provinces were allowed to attend public schools at the primary level under the same conditions as local children.[23]

---

[16] XIANFA [CONSTITUTION] art. 32, § 2 (1982), 2004 FAGUI HUIBIAN 4–28.

[17] Exit and Entry Law art. 46.

[18] *UNHCR Regional Representation in China*, *supra* note 14; *Cong Guojifa Yiwu Tan Woguo de Nanmin Zhenbie Jizhi* [*On Building Our Refugee Determination System from Perspective of International Law Obligations*], XINHUANET (May 13, 2015), http://news.xinhuanet.com/legal/2015-05/13/c_127793981.htm, *archived at* https://perma.cc/A9FR-C4DK.

[19] ZhaoYinan, *Legal Status for Seekers of Asylum*, CHINA DAILY (July 2, 2012), http://usa.chinadaily.com.cn/china/2012-07/02/content_15540683.htm, *archived at* https://perma.cc/FH74-HUJM.

[20] Other than those Indochinese refugees China accepted in 1970s and still hosts, who were provided refugee status and settled in southern China. *UNHCR Regional Representation in China*, *supra* note 14.

[21] *Id*.

[22] Lili Song, *Refugee Protection in China: Recent Legal and Policy Developments*, RIGHTS IN EXILE (Sept. 1, 2014), http://rightsinexile.tumblr.com/post/96365498957/refugee-protection-in-china-recent-legal-and, *archived at* https://perma.cc/9LEE-JJ98.

[23] *Chinese Schools Offer Primary Education for Urban Refugees*, UNHCR (Nov. 22, 2013), http://www.unhcr.org/528f66086.html, *archived at* https://perma.cc/8SSB-AS67.

European Union

Jenny Gesley
Foreign Law Specialist

SUMMARY No EU legislation deals with immigration enforcement relief for the children of illegal immigrants. The individual EU Member States grant specific status rights and decide who can acquire nationality. Nonetheless, all immigrants in the EU enjoy certain fundamental rights irrespective of their immigration status, including access to education and health care. Member States are also obliged to take the best interests of the child and family life into account in removal proceedings.

The European Union (EU) has enacted various legislative measures intended to facilitate legal migration and to address illegal immigration.[1] However, with the exception of asylum seekers,[2] it is up to the individual EU Member States to grant specific status rights and to decide who can acquire nationality.[3] Nonetheless, irrespective of their immigration status, all immigrants enjoy certain fundamental rights, like access to education and health care, derived from international human rights treaties, the European Convention on Human Rights (ECHR),[4] and the Charter of Fundamental Rights of the EU (EU Charter).[5] EU secondary law, meaning legal instruments based on the EU Founding Treaties, spells out the rights of illegal migrants to different degrees, depending on the subject area.

With regard to children in general, article 24 of the EU Charter provides that children's best interests must be a primary consideration in all actions relating to children, whether taken by public authorities or private institutions, and that every child has "the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests."

The EU Return Directive provides a minimum level of specific fundamental rights for illegal third-country nationals in return procedures and for those who are not removed due to legal, humanitarian, or actual obstacles.[6] The EU Return Directive explicitly recognizes that it is

---

[1] Consolidated Version of the Treaty on the Functioning of the European Union (TFEU), art. 79, 2012 O.J. (C 326) 47, http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012E/TXT&from=EN, *archived at* http://perma.cc/U5GT-QE3D.

[2] *Id.* art. 78.

[3] European Court of Justice (ECJ), Case C-135/08, Janko Rottmann v. Freistaat Bayern, para. 39, http://curia.europa.eu/juris/document/document.jsf?text=&docid=75336&pageIndex=0&doclang=en&mode=req&dir=&occ=first&part=1&cid=1553681, *archived at* http://perma.cc/8SZY-4CCN.

[4] European Convention on Human Rights (ECHR), Nov. 4, 1950, 213 U.N.T.S. 221, http://www.echr.coe.int/Documents/Convention_ENG.pdf, *archived at* http://perma.cc/L66H-SW6K.

[5] Charter of Fundamental Rights of the European Union, 2012 O.J. (C 326) 2, http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012P/TXT&from=EN, *archived at* http://perma.cc/7YQU-NQHJ.

[6] Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on Common Standards and Procedures in Member States for Returning Illegally Staying Third-Country Nationals, 2008 O.J.

legitimate for Member States to return illegally staying third-country nationals.[7] However, it obliges the Member States to take the best interests of the child and family life into account when implementing the Directive.[8]

Citizenship of the EU is granted to every person holding the nationality of an EU Member State, but it is additional and does not replace national citizenship.[9] As the granting of national citizenship falls within the competence of the individual Member States, no EU legislation deals with immigration enforcement relief similar to the US DACA program for children of illegal immigrants. However, a third-country national who is the parent of an EU-citizen minor child may rely on a derived right of residence in the EU if the child would otherwise have to leave the EU and therefore be deprived of the enjoyment of the substance of the rights attached to EU citizenship.[10]

(L 348) 98, http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:348:0098:0107:en:PDF, *archived at* http://perma.cc/V96K-72MV.

[7] *Id*. consideration 8.

[8] *Id*. art. 5.

[9] TFEU, *supra* note 1, art. 20, para. 1.

[10] ECJ, Case C-34/09, Gerardo Ruiz Zambrano v. Office national de l'emploi (ONEm), para. 45, http://curia.europa.eu/juris/document/document.jsf?text=&docid=80236&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=1556811, *archived at* http://perma.cc/9RVA-M7BD; ECJ, Case C-133/15, H.C. Chavez-Vilchez and Others v. Raad van bestuur van de Sociale verzekeringsbank and Others, http://curia.europa.eu/juris/document/document.jsf?text=&docid=190502&pageIndex=0&doclang=en&mode=req&dir=&occ=first&part=1&cid=1557518, *archived at* http://perma.cc/2UV5-3X8H.

France

Nicolas Boring
Foreign Law Specialist

SUMMARY Under French law, individuals who have been in France since the age of thirteen or younger may generally not be deported, and they can qualify for a type of residency permit that would allow them to live and work in France, and would make them eligible to apply for naturalization.

I. Protection Against Deportation

There are four principal ways in which a non-European foreigner may be deported from France. One is through an order to "be taken back to the border" (*arrêté de reconduite à la frontière*), which only applies to persons who have been in France for three months at most, and is therefore not relevant to the present discussion.[1] The three others are the obligation to leave France (*obligation de quitter la France*), which principally applies to persons who reside in France illegally;[2] expulsion, which applies to individuals who present a threat to public order;[3] and "prohibition from being on French territory" (*interdiction du territoire français*), which applies to individuals who have committed certain criminal offenses.[4] There are some other procedures, such as the deportation of a non-European foreigner to another European Union country,[5] but they do not appear to be as common as the four main ones cited above, and are not relevant to the present discussion.

---

[1] *Arrêté préfectoral de reconduite à la frontière (APRF)* [*Prefectoral Order to Be Taken Back to the Border (APRF)*], SERVICE-PUBLIC.FR [Website of the French administrative services] (Apr. 21, 2016), https://www.service-public.fr/particuliers/vosdroits/F11954, *archived at* https://perma.cc/8434-JJ4G.

[2] *Obligation de quitter la France (OQTF)* [*Obligation to Leave France (OQTF)*], SERVICE-PUBLIC.FR (Feb. 15, 2017), https://www.service-public.fr/particuliers/vosdroits/F18362, *archived at* https://perma.cc/6MWG-XPQ6.

[3] *Expulsion d'un étranger: décision et exécution* [*Expulsion of a Foreigner: Decision and Execution*], SERVICE-PUBLIC.FR (Feb. 16, 2017), https://www.service-public.fr/particuliers/vosdroits/F11891, *archived at* https://perma.cc/4WTK-8NWD.

[4] *Interdiction du territoire français (ITF)* [*Prohibition from Being on French Territory (ITF)*], SERVICE-PUBLIC.FR (Aug. 3, 2016), https://www.service-public.fr/particuliers/vosdroits/F2784, *archived at* https://perma.cc/M4K4-DNQ5.

[5] *Éloignement des étrangers* [*Deportation of Foreigners*], SERVICE-PUBLIC.FR, https://www.service-public.fr/particuliers/vosdroits/N109 (last visited Sept. 15, 2017), *archived at* https://perma.cc/QEG5-ZF89.

A. Protection Against the Obligation to Leave France

The general rule in France is that a person who does not have the documentation to show that he/she is in France legally will be ordered to leave the country.[6] A few exceptions to that rule exist, however, including exceptions based on the subject's age or length of residency in France.

No one under the age of eighteen may be ordered to leave the country.[7] This protection does not extend to a minor's parents, however, so children may be indirectly forced to leave France as a consequence of their parents being ordered to leave.[8]

Another exception is that a person—even an adult—who can show by any means that he/she has habitually lived in France since the age of thirteen or younger cannot be ordered to leave France.[9]

B. Protection Against Administrative and Judicial Expulsion

A foreigner can be expelled from France if his/her presence "constitutes a serious threat to public order."[10] Certain categories of persons are protected against this type of measure, however, in the sense that they may only expelled if their behavior would threaten "the fundamental interests of the State;" if they are involved in terrorist activities; or if they acted in such a way as to deliberately and explicitly provoke discrimination, hate, or violence against a specific person or group of persons.[11] Among the categories of persons who can only be expelled under this heightened standard are individuals who can show that they have resided habitually in France since the age of thirteen or younger.[12] Individuals under the age of eighteen cannot be expelled at all, even under the abovementioned heightened standard.[13]

---

[6] CODE DE L'ENTRÉE ET DU SÉJOUR DES ÉTRANGERS ET DU DROIT D'ASILE [C.E.S.E.D.A.] [CODE OF THE ENTRY AND STAY OF FOREIGNERS AND OF THE RIGHT OF ASYLUM] art. L511-1, https://www.legifrance.gouv.fr/affichCodeArticle.do;jsessionid=8B48E7DD919AADF699C28381591D16E9.tpdila08v_3?idArticle=LEGIARTI000032171754&cidTexte=LEGITEXT000006070158&dateTexte=20170914, *archived at* https://perma.cc/2JK2-TQYX.

[7] *Id.* art. L511-4(1°), https://www.legifrance.gouv.fr/affichCodeArticle.do;jsessionid=B4DC5CB2C359F84EDE6DB4534C37DBEE.tpdila10v_1?idArticle=LEGIARTI000032172264&cidTexte=LEGITEXT000006070158&dateTexte=20170915, *archived at* https://perma.cc/7KLP-TW7H.

[8] FABIENNE JAULT-SESEKE ET AL., DROIT DE LA NATIONALITÉ ET DES ÉTRANGERS [LAW OF NATIONALITY AND FOREIGNERS] 528 (2015).

[9] C.E.S.E.D.A. art. L511-4(2°).

[10] *Id.* art. L521-1, https://www.legifrance.gouv.fr/affichCodeArticle.do;jsessionid=575C1E731934FB05DCF51226F4F70612.tpdila10v_1?idArticle=LEGIARTI000006335207&cidTexte=LEGITEXT000006070158&dateTexte=20170915, *archived at* https://perma.cc/LZ2Z-SCJD.

[11] *Id.* art. L521-3, https://www.legifrance.gouv.fr/affichCodeArticle.do;jsessionid=575C1E731934FB05DCF51226F4F70612.tpdila10v_1?idArticle=LEGIARTI000032172257&cidTexte=LEGITEXT000006070158&dateTexte=20170915, *archived at* https://perma.cc/6JEH-6NYE.

[12] *Id.* art. L521-3(1°).

[13] *Id.* art. L521-4, https://www.legifrance.gouv.fr/affichCodeArticle.do;jsessionid=575C1E731934FB05DCF51226F4F70612.tpdila10v_1?idArticle=LEGIARTI000006335212&cidTexte=LEGITEXT000006070158&dateTexte=20170915, *archived at* https://perma.cc/S4JA-QZ6V.

The decision to expel an individual is an administrative one, generally taken by the prefect who has jurisdiction over that individual's place of residence.[14] A similar decision can be taken by a judge as part of the sentence for certain criminal offenses.[15] Such a measure is called a "prohibition from being on French territory," and while it is technically distinct from an expulsion, it appears in practice to be very similar.[16] A prohibition from being on French territory may not be issued against a foreigner who can show that he/she has habitually resided in France since the age of thirteen or younger.[17]

II. Residency and Citizenship

Unless his/her presence in France constitutes a menace to public order, an undocumented immigrant who arrived in France as a child is eligible for a residency permit.[18] To qualify, an individual must apply in the year following his/her eighteenth birthday and be able to show, by any means, that he/she has resided in France with at least one parent since the age of thirteen.[19] This residency permit authorizes its recipient to work legally in France,[20] and it is initially valid for one year.[21] After that first year, the applicant is eligible for another type of residency permit, which is valid for four years and is renewable indefinitely.[22]

Any child whose parents are foreign but who was born in France can claim French citizenship upon reaching the age of eighteen, provided that (a) he/she has lived in France for at least five

---

[14] *Expulsion d'un étranger : décision et exécution* [*Expulsion of a Foreigner : Decision and Execution*], *supra* note 3.

[15] C.E.S.E.D.A. art. L541-1, https://www.legifrance.gouv.fr/affichCodeArticle.do;jsessionid=575C1E731934FB05DCF51226F4F70612.tpdila10v_1?idArticle=LEGIARTI000006335233&cidTexte=LEGITEXT000006070158&dateTexte=20170915, *archived at* https://perma.cc/DP5S-5RYH.

[16] *Interdiction du territoire français (ITF)* [*Prohibition from Being on French Territory (ITF)*], SERVICE-PUBLIC.FR (Aug. 3, 2016), https://www.service-public.fr/particuliers/vosdroits/F2784, *archived at* https://perma.cc/M4K4-DNQ5.

[17] C.E.S.E.D.A. art. L541-1, https://www.legifrance.gouv.fr/affichCodeArticle.do;jsessionid=575C1E731934FB05DCF51226F4F70612.tpdila10v_1?idArticle=LEGIARTI000006335233&cidTexte=LEGITEXT000006070158&dateTexte=20170915, *archived at* https://perma.cc/3E7Q-KUFL.

[18] *Id.* art. L313-11(2°), https://www.legifrance.gouv.fr/affichCodeArticle.do;jsessionid=F11DBF7D89B8BF16714464A68C57F0BA.tpdila10v_1?idArticle=LEGIARTI000032186978&cidTexte=LEGITEXT000006070158&dateTexte=20170915, *archived at* https://perma.cc/YYM8-EEEE.

[19] *Id.*

[20] *Id.* art. L313-12, https://www.legifrance.gouv.fr/affichCodeArticle.do;jsessionid=575C1E731934FB05DCF51226F4F70612.tpdila10v_1?idArticle=LEGIARTI000032171230&cidTexte=LEGITEXT000006070158&dateTexte=20170915, *archived at* https://perma.cc/W343-8RX5.

[21] *Id.* arts. L313-11 & L311-1(3°), https://www.legifrance.gouv.fr/affichCodeArticle.do;jsessionid=575C1E731934FB05DCF51226F4F70612.tpdila10v_1?idArticle=LEGIARTI000032171097&cidTexte=LEGITEXT000006070158&dateTexte=20170915, *archived at* https://perma.cc/7K9X-CDS7.

[22] *Id.* art. L313-17, https://www.legifrance.gouv.fr/affichCode.do;jsessionid=575C1E731934FB05DCF51226F4F70612.tpdila10v_1?idSectionTA=LEGISCTA000032166260&cidTexte=LEGITEXT000006070158&dateTexte=20170915, *archived at* https://perma.cc/4G2H-YUFX.

years (continuously or not) after the age of eleven, and (b) he/she resides in France at the time he/she turns eighteen.[23] There does not appear to be any path to French citizenship that would apply specifically to individuals who came to France as children. However, there does not appear to be any legal barrier to such individuals acquiring French citizenship through normal means of naturalization, so long as they have a legal residency status when they apply.[24]

[23] CODE CIVIL [CIVIL CODE] art. 21-7, https://www.legifrance.gouv.fr/affichCodeArticle.do;jsessionid=575C1E731934FB05DCF51226F4F70612.tpdila10v_1?idArticle=LEGIARTI000006419826&cidTexte=LEGITEXT000006070721&dateTexte=20170915, *archived at* https://perma.cc/4JYX-7VX8.

[24] *Naturalisation : conditions à remplir* [*Naturalization: Requirements*], SERVICE-PUBLIC.FR (Mar. 17, 2017), https://www.service-public.fr/particuliers/vosdroits/F2213, *archived at* https://perma.cc/B32Z-CAA2.

Germany

Jenny Gesley
Foreign Law Specialist

SUMMARY Foreigners may only enter and stay in Germany if they possess a valid passport and residence title. Minor children generally derive their immigration status from their parents. However, since an amendment of the Residence Act in 2011, well-integrated young people between the ages of fourteen and twenty-one whose deportations have been temporarily suspended may apply for a temporary residence permit irrespective of their parents' immigration status. A temporary residence permit will be granted if the juvenile or adolescent applies before he or she turns twenty-one; has resided in Germany for four years without interruption either legally, because his or her deportation has been temporarily suspended, or because permission to stay has been granted pending an asylum decision; has successfully attended a German school for four years; appears to be able to integrate into the German way of life; and if there is no concrete evidence to suggest that the applicant is not committed to the free, democratic basic order of Germany. A temporary residence permit is valid for a maximum of three years and entitles the beneficiary to work.

Only foreigners who have been legally residing in Germany, have not been convicted of a crime, have a place to live, and can secure their subsistence may apply for German citizenship.

I. General Overview

In the absence of any provisions to the contrary in the law of the European Union (EU) or a statutory instrument, foreigners may only enter and stay in Germany if they possess a recognized and valid passport and a residence title.[1] Residence titles include visas, temporary residence permits, EU Blue Cards, permanent settlement permits, and EU long-term residence permits.[2] Entering or staying in Germany without a passport or residence title is a criminal offense punishable by imprisonment of up to one year or a fine.[3] Foreigners that do not or no longer have a valid residence title are required to leave Germany[4] and are subject to deportation if they

[1] Gesetz über den Aufenthalt, die Erwerbstätigkeit und die Integration von Ausländern im Bundesgebiet [Aufenthaltsgesetz – AufenthG] [Act on the Residence, Economic Activity, and Integration of Foreigners in the Federal Territory] [Residence Act], Feb. 25, 2008, BUNDESGESETZBLATT [BGBL.] [FEDERAL LAW GAZETTE] I at 162, as amended, §§ 3, 4, http://www.gesetze-im-internet.de/aufenthg_2004/AufenthG.pdf, *archived at* http://perma.cc/KM9J-B4AX, unofficial English translation *available at* http://www.gesetze-im-internet.de/englisch_aufenthg/englisch_aufenthg.pdf, *archived at* http://perma.cc/7FKU-XFSK (English version updated through Mar. 11, 2016).

[2] *Id.* § 4, para. 1.

[3] *Id.* § 95, para. 1.

[4] *Id.* § 50.

do not leave voluntarily.[5] However, deportation must be temporarily suspended (known as *Duldung*, or "toleration") if deporting the foreigner is actually or legally impossible.[6]

II. Granting of Temporary Residence to Well-Integrated Juveniles and Adolescents

In general, minor children derive their residence status from their parents; they "share in their parents' immigration fate."[7] However, in 2011, the German Residence Act was amended to allow well-integrated juveniles and adolescents whose deportations have been temporarily suspended to apply for a temporary residence permit irrespective of their parents' immigration status.[8] In 2015, the provision was amended to ease some of the requirements and strike out the requirement that an applicant had to be born in Germany or brought to Germany before the age of fourteen to be eligible.[9] The provision states that a juvenile or adolescent foreigner whose deportation has been temporarily suspended must be granted a temporary residence permit if (1) he or she has resided in Germany for four years without interruption either legally, because his or her deportation has been temporarily suspended, or because permission to stay has been granted pending the asylum decision; (2) he or she has successfully attended a German school for four years; (3) the application is filed before the applicant turns twenty-one; (4) it appears that he or she will be able to integrate into the German way of life; and (5) there is no concrete evidence to suggest that the applicant is not committed to the free, democratic basic order of Germany. The general requirements for a residence title codified in section 5 of the Residence Act also have to be fulfilled, with the exception that receiving public benefits for the purpose of ensuring his or her subsistence while attending school does not preclude the granting of the temporary residence permit.[10]

A temporary residence permit enables the applicant to work.[11] It may be issued and extended for a maximum period of three years.[12]

As of December 31, 2016, 3,225 temporary residence permits had been granted under section 25a, paragraph 1 of the Residence Act.[13]

---

[5] *Id.* §§ 58, 58a.

[6] *Id.* § 60a.

[7] BUNDESVERWALTUNGSGERICHT [BVERWG] [FEDERAL ADMINISTRATIVE COURT], docket no. 1 C 22.09, para. 45, https://www.bverwg.de/entscheidungen/pdf/110111U1C22.09.0.pdf, *archived at* http://perma.cc/YA69-FCZH.

[8] Residence Act § 25a.

[9] DEUTSCHER BUNDESTAG: DRUCKSACHEN UND PROTOKOLLE [BT-DRS.] 18/4097, p. 28, http://dipbt.bundestag.de/doc/btd/18/040/1804097.pdf, *archived at* http://perma.cc/TF8K-PF3L.

[10] Residence Act § 25a, para. 1, sentence 2.

[11] *Id.* § 25a, para. 4.

[12] *Id.* § 26, para. 1.

[13] BT-DRS. 18/11101, p. 8, http://dipbt.bundestag.de/doc/btd/18/111/1811101.pdf, *archived at* http://perma.cc/8JUA-AS2D.

A. Juveniles or Adolescents

The provision only applies to juveniles and adolescents who submit an application before they turn twenty-one. "Juveniles" are defined as children between the ages of fourteen and eighteen. "Adolescents" are young people between the ages of eighteen and twenty-one.[14]

B. Temporary Suspension of Deportation

Only juveniles and adolescents whose deportations have been temporarily suspended are eligible to apply. A deportation must be temporarily suspended, and the foreigner is "tolerated" in Germany, if deportation is actually or legally impossible.[15] "Actual impossibility" exists when difficulties are encountered in the deportation process that cannot be remedied, or can only be remedied with unreasonable effort. That is already the case when deportation cannot be executed in a timely manner or when it is uncertain when it will take place.[16] Examples of actual impossibility include having no passport and not being able to get one for a foreseeable time; unknown citizenship; statelessness; or the impossibility of traveling due to an illness, late-term pregnancy, or the like.

"Legal impossibility" exists when there is a prohibition on deportation based on a statute, constitutional law, or international law. Examples include prohibitions of deportation within the meaning of section 60 of the Residence Act; missing consent from the public prosecutor's office or the Office for the Protection of Witnesses;[17] an ongoing asylum follow-up procedure with no notification regarding the deportation from the Federal Office for Migration and Refugees;[18] an ongoing secondary application for asylum;[19] temporary suspension of deportation for family members of foreigners who have filed an asylum application;[20] the late filing of an application of a legally resident foreigner for a residence title;[21] and rights derived from the German Basic Law (Constitution)[22] or the European Convention on Human Rights (ECHR),[23] in particular article 6

---

[14] Jugendgerichtsgesetz [JGG] [Youth Courts Act], Dec. 11, 1974, BGBL. I at 3427, as amended, § 1, para. 2, http://www.gesetze-im-internet.de/jgg/JGG.pdf, *archived at* http://perma.cc/9JR2-DHR5, unofficial English translation *available at* http://www.gesetze-im-internet.de/englisch_jgg/englisch_jgg.pdf, *archived at* http://perma.cc/3TCM-Z4QV.

[15] Residence Act § 60a.

[16] BUNDESVERFASSUNGSGERICHT [BVERFG] [FEDERAL CONSTITUTIONAL COURT], docket no. 2 BvR 397/02, para. 37, http://www.bverfg.de/e/rk20030306_2bvr039702.html, *archived at* http://perma.cc/LFF2-AEPS.

[17] Residence Act § 72, para. 4.

[18] Asylgesetz [AsylG] [Asylum Act], Sept. 2, 2008, BGBL. I at 1798, as amended, § 71, para. 5, sentence 2, http://www.gesetze-im-internet.de/asylvfg_1992/AsylG.pdf, *archived at* http://perma.cc/L6C8-DYXT, unofficial English translation *available at* http://www.gesetze-im-internet.de/englisch_asylvfg/englisch_asylvfg.pdf, *archived at* http://perma.cc/UT4A-JMSX.

[19] *Id*. § 71a, para. 3.

[20] *Id*. § 43, para. 3.

[21] Residence Act § 81, para. 3, sentence 2.

[22] GRUNDGESETZ FÜR DIE BUNDESREPUBLIK DEUTSCHLAND [GRUNDGESETZ] [GG] [BASIC LAW], May 23, 1949, BGBL. I at 1, http://www.gesetze-im-internet.de/bundesrecht/gg/gesamt.pdf, *archived at* http://perma.cc/8NFT-

of the Basic Law (protection of marriage and family) and article 8 ECHR (right to respect for private and family life).

The right to respect for private life codified in article 8 ECHR is of particular relevance in cases of foreigners who were born in Germany or brought to Germany at a young age. "Private life" encompasses the network of personal, social, and economic relations that make up the private life of every human being, and that become more and more important the longer a person has stayed in a country.[24] Any interference by a public authority with the exercise of this right must be "in accordance with the law and necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."[25] Article 8 ECHR might be violated if a foreigner is deported who has *de facto* become a native, because he or she is so rooted in Germany. Being returned to a country of nationality with which he or she has no connection would therefore not be proportionate. Factors to take into consideration are economic and social integration into society, immigration status, adherence to legal rules, the length and reason for being in Germany, and knowledge of the German and foreign languages, among others. The right of the foreigner must be balanced against the right of Germany to control immigration.[26]

C. Residency Requirement

At the time of the decision about the application, the applicant must have resided in Germany for four years without interruption either legally, because his or her deportation has been temporarily suspended, or because permission to stay has been granted pending an asylum decision.[27] Residence based on different legal grounds is cumulative; short periods of departure from Germany without changing one's main center of life are irrelevant. [28]

SVRZ, unofficial English translation *at* http://www.gesetze-im-internet.de/englisch_gg/englisch_gg.pdf, *archived at* http://perma.cc/AF85-NA4C.

[23] European Convention on Human Rights (ECHR), Nov. 4, 1950, 213 U.N.T.S. 221, http://www.echr.coe.int/Documents/Convention_ENG.pdf, *archived at* http://perma.cc/L66H-SW6K.

[24] BVerfG, docket no. 2 BvR 304/07, para. 33, http://www.bverfg.de/e/rk20070510_2bvr030407.html, *archived at* http://perma.cc/4V8V-QYFY.

[25] ECHR, *supra* note 23, art. 8, para. 2.

[26] *See*, *e.g.*, Oberverwaltungsgericht des Landes Sachsen-Anhalt [Higher Regional Court of the State of Saxony-Anhalt], docket no. 2 L 18/15, para. 60, http://www.landesrecht.sachsen-anhalt.de/jportal/portal/t/1pgd/page/bssahprod.psml?pid=Dokumentanzeige&showdoccase=1&js_peid=Trefferliste&documentnumber=1&numberofresults=1&fromdoctodoc=yes&doc.id=MWRE170004680&doc.part=L&doc.price=0.0&doc.hl=1#focuspoint, *archived at* http://perma.cc/JB44-FXQR; BVerwG, docket no. 1 C 8/96, para. 30, https://www.jurion.de/urteile/bverwg/1998-09-29/1-c-8_96/, *archived at* http://perma.cc/VLB2-RWML.

[27] Residence Act § 25a, para. 1, no. 1.

[28] OVG Lüneburg [Higher Regional Court of Lüneburg], docket no. 8 LA 26/12, para. 8, http://www.rechtsprechung.niedersachsen.de/jportal/portal/page/bsndprod.psml?doc.id=MWRE120001133&st=null&showdoccase=1, *archived at* http://perma.cc/CJ7Q-ABPE.

D. Educational Requirement

The applicant must have successfully attended a German school for four years or acquired a recognized vocational or graduate qualification.[29] A school has been "successfully" attended if the applicant attended regularly and his or her grades were good enough to advance to the next school year or to graduate.[30]

E. Integration

In addition, there needs to be a positive integration prognosis based on the child's education and way of life to date.[31] Four years of successful school attendance generally indicates that the child will be able to integrate into society. Criminal convictions generally prevent a positive prognosis, but are judged on a case-by-case basis.[32]

F. Loyalty to the German Basic Law

No express statement of commitment is necessary; the absence of indications that the applicant is not committed to the free, democratic basic order is sufficient.[33] Being well-integrated into society generally indicates that the applicant supports the free democratic order.[34]

G. Exclusions

A temporary residence permit will not be granted if deportation has been suspended on the basis of false information furnished by the applicant or because the applicant lied about his or her identity or nationality.[35] However, deceptive actions by the parents will not be imputed to the applicant.[36]

---

[29] Residence Act § 25a, para. 1, no. 2.

[30] BT-DRS. 18/4097, *supra* note 9, at 42.

[31] Residence Act § 25a, para. 1, no. 4.

[32] BT-DRS. 17/5093, p. 15, http://dipbt.bundestag.de/doc/btd/17/050/1705093.pdf, *archived at* http://perma.cc/A8AA-SHJK; OVG Lüneburg [Higher Regional Court Lüneburg], docket no. 8 LB 5/11, paras. 77 & 78, http://www.rechtsprechung.niedersachsen.de/jportal/?quelle=jlink&docid=MWRE120001435&psml=bsndprod.psml&max=true, *archived at* http://perma.cc/RFZ5-LSNC (where the court gave the applicant a positive integration prognosis despite a juvenile conviction for simple assault for pulling another girl's hair, because the court held it to be a typical one-time youthful transgression between minors of the same age that did not result in any serious harm).

[33] Residence Act § 25a, para. 1, no. 5; BT-Drs. 18/4097, *supra* note 9, p. 29.

[34] Ralph Göbel-Zimmermann, *§25a AufenthG*, *in* AUFENTHALTSGESETZ [RESIDENCE ACT] 280, para. 15 (Bertold Huber ed., 2d ed. 2016).

[35] Residence Act, § 25a, para. 1, sentence 3.

[36] BT-DRS. 17/5093, *supra* note 32, p. 16; BVerwG, docket no. 1 C 17.12, paras. 16 & 17, http://www.bverwg.de/entscheidungen/pdf/140513U1C17.12.0.pdf, *archived at* http://perma.cc/ZP4C-9ZWN.

H. Temporary Residence Permit for Parents/Spouses of Well-Integrated Minors and Adolescents

The parents (or the parent possessing the right of care and custody) of a foreign minor who has been granted a temporary residence permit may also be granted temporary residence permits if they fulfill the following additional requirements:

- The temporary suspension of deportation must not have been caused by them because they provided false or deceptive information with regard to their identity and nationality or because they failed to meet reasonable demands to eliminate obstacles to their departure.
- In addition, they must be able to earn a living, including purchasing adequate health insurance coverage, without recourse to public funds.[37]

The same considerations apply to spouses and domestic partners who live with the beneficiary.[38] Minor siblings of the beneficiary or other minor children of the parents may also be granted a temporary residence permit if they live together in a family unit.[39]

The decision to grant such temporary resident permits is discretionary.[40] A temporary residence permit will not be granted if the parents or spouses have been convicted of a serious intentional crime in Germany.[41] Fines of up to fifty daily rates, or up to ninety daily rates in the case of offenses that can only be committed by foreigners, are not taken into account.[42]

If the additional requirements for receiving a temporary residence permit are not fulfilled and as long as the beneficiary is still a minor, the deportation of the parents and the minor children who live with them as a family unit must be suspended.[43]

III. Acquisition of Citizenship

A foreigner who legally resides in Germany, has not been convicted of a crime, has a place to live, and can secure his or her subsistence may apply for German citizenship.[44] This provision is a discretionary norm and the request for citizenship will be granted if there is a public interest in the naturalization of the applicant. The criteria are integration into German society; sufficient

---

[37] Residence Act § 25a, para. 2.

[38] *Id.*

[39] *Id*.

[40] *Id*. ("may be granted . . . ").

[41] *Id*. § 25a, para. 3.

[42] *Id.*

[43] *Id*. § 60a, para. 2b.

[44] Staatsangehörigkeitsgesetz (StAG) [Nationality Act], July 22, 1913, REICHTSGESETZBLATT [RGBL.] [IMPERIAL LAW GAZETTE] I at 583, as amended, § 8, http://www.gesetze-im-internet.de/rustag/StAG.pdf, *archived at* http://perma.cc/ZFD6-GDH3, unofficial English translation *available at* http://www.gesetze-im-internet.de/englisch_rustag/englisch_rustag.pdf, *archived at* http://perma.cc/9QJD-67BA.

knowledge of the German language; length of residence; legality of residence; and commitment to the free, democratic basic order of Germany, among others.[45]

[45] Allgemeine Verwaltungsvorschrift zum Staatsangehörigkeitsrecht (StAR-VwV) [General Administrative Regulation Regarding Nationality Law], Dec. 13, 2000, no. 8.1.2, http://www.verwaltungsvorschriften-im-internet.de/bsvwvbund_13122000_V612400513.htm, *archived at* http://perma.cc/AV5X-3UP8.

India

Tariq Ahmad
Foreign Law Specialist

SUMMARY Illegal migrants are excluded from the acquisition of citizenship through birth, registration, or naturalization in India. There is no program to grant illegal migrants or their children legal status or citizenship.

I. Introduction

In India, the entry, stay, and exit of foreign nationals are primarily regulated by the Passport Act 1920,[1] the Foreigners Act 1946,[2] and the Registration of Foreigners Act 1939.[3] Citizenship requirements and pathways are predominantly regulated by the Indian Constitution[4] and the Citizenship Act, 1955.[5] The Foreigners Division of the Ministry of Home Affairs (MHA) administers all matters, including policies, statutes, and rules, related to visas, immigration, citizenship, and "overseas citizenship."[6]

II. Illegal Migrants and Legal Status

India does not appear to have a system of permanent residency or green cards comparable to the United States. Only persons of Indian origin are allowed to live and work in India on a permanent basis through the Overseas Citizenship of India (OCI) program. More recently, the government of India has introduced a program for permanent residency status for foreign investors.[7]

---

[1] Passport (Entry into India) Act, No. 34 of 1920, *available at* http://www.mha.nic.in/sites/upload_files/mha/files/pdf/PptEntryAct1920.pdf, *archived at* https://perma.cc/XL8M-6PSZ.

[2] Foreigners Act, No. 31 of 1946, http://www.mha.nic.in/pdfs/The%20Foreigners%20Act,%201946.pdf, *archived at* https://perma.cc/E2YS-3N5T.

[3] Registration of Foreigners Act, No. 16 of 1939, http://www.mha.nic.in/sites/upload_files/mha/files/pdf/The_Registration_of_Foreigners_Act_1939.pdf, *archived at* https://perma.cc/QPM4-733J.

[4] INDIA CONST. arts. 5–11, http://lawmin.nic.in/olwing/coi/coi-english/coi-indexenglish.htm, *archived at* https://perma.cc/P36S-KCWU.

[5] Citizenship Act, No. 57 of 1955, http://mha.nic.in/sites/upload_files/mha/files/pdf/ic_act55.pdf, *archived at* https://perma.cc/2838-GM72.

[6] *About Foreigners Division*, MINISTRY OF HOME AFFAIRS – FOREIGNERS DIVISION, http://mha1.nic.in/foreigDiv/abtDiv.html (last visited Sept. 16, 2017), *archived at* https://perma.cc/HY5N-WCBT.

[7] Press Release, Government of India, Cabinet, Cabinet Approves Grant of Permanent Residency Status to Foreign Investors (Aug. 31, 2016), http://pib.nic.in/newsite/PrintRelease.aspx?relid=149376, *archived at* https://perma.cc/3ER9-4HRT.

There is no evidence that the Indian government provides residency permits or visas (at least on an organized basis) to illegal migrants or their children. However, a recent news report indicated that,

> [i]n September 2015 and July 2016, the central government exempted certain groups of illegal migrants from being imprisoned or deported. These are illegal migrants who came into India from Afghanistan, Bangladesh or Pakistan on or before December 31, 2014, and belong to the Hindu, Sikh, Buddhist, Jain, Parsi or Christian religious communities. Illegal migrants from this group cannot be imprisoned or deported for not having valid travel documents.[8]

III. Illegal Migrants and Citizenship

Under current law, Indian citizenship is largely determined by the rule of *jus sanguinis* (citizenship of the parents) as opposed to *jus soli* (place of birth), and India "provides for a single citizenship for the whole of India."[9] A person can be a citizen by birth, descent, registration, or naturalization.[10]

Under the Citizenship Act an "illegal migrant" is defined as a foreigner who has entered into India—

> (i) without a valid passport or other travel documents and such other document or authority as may be prescribed by or under any law in that behalf; or
> (ii) with a valid passport or other travel documents and such other document or authority as may be prescribed by or under any law in that behalf but remains therein beyond the permitted period of time[.][11]

An illegal migrant is excluded from the acquisition of citizenship through birth, registration, or naturalization. There is no program to grant citizenship to illegal migrants or their children.

The children of illegal migrants cannot acquire citizenship by birth if they were born on or after December 3, 2004. According to the 1955 Act, a person born in India on or after January 26, 1950, and before July 1, 1987, was a citizen by birth "irrespective of the nationality of his parents."[12] A person born in India on or after July 1, 1987, but before December 3, 2004, was "considered a citizen of India by birth if either of his parents [was] a citizen of India at the time

---

[8] Anviti Chaturvedi, *Simply Put: Understanding Issues of Illegal Migration in New Citizenship Bill*, INDIAN EXPRESS (Oct. 25, 2016), http://indianexpress.com/article/explained/understanding-issues-of-illegal-migration-in-new-citizenship-bill-3101213/, *archived at* https://perma.cc/3ZR6-JZXJ.

[9] *Citizenship*, KNOW INDIA, http://knowindia.gov.in/profile/citizenship.php (last visited Sept. 19, 2017), *archived at* https://perma.cc/YJ77-XC2A.

[10] TARIQ AHMAD, CITIZENSHIP PATHWAYS AND BORDER PROTECTION: INDIA (Law Library of Congress, Mar. 2013), https://www.loc.gov/law/help/citizenship-pathways/india.php, *archived at* https://perma.cc/8V9K-MPWT.

[11] Citizenship Act § 2(1)(b).

[12] *Acquisition of Indian Citizenship (IC)*, MINISTRY OF HOME AFFAIRS – FOREIGNERS DIVISION, http://indiancitizenshiponline.nic.in/acquisition1.htm (last visited Sept. 19, 2017), *archived at* https://perma.cc/D8XX-MQLF; *see also* Citizenship Act § 3(a).

of his birth."[13] A person born in India on or after December 3, 2004, is considered citizen of India by birth only "if both the parents are citizens of India or one of the parents is a citizen of India *and the other is not an illegal migrant at the time of his birth*."[14]

In India, citizenship by naturalization can be acquired by "a foreigner (*not illegal migrant*) who is ordinarily resident in India for twelve years (throughout the period of twelve months immediately preceding the date of application and for eleven years in the aggregate in the fourteen years preceding the twelve months)."[15] Similarly, for citizenship through registration the Citizenship Act stipulates that "the Central Government may, on an application made in this behalf, register as a citizen of India any person *not being an illegal migrant . . . .*"[16]

In terms of citizenship by descent, a person born outside of India to an Indian citizen parent on or after December 3, 2004, is not a citizen of India, "unless the parents declare that the minor does not hold passport of another country and his birth is registered at an Indian consulate within one year of the date of birth or with the permission of the Central Government, after the expiry of the said period."[17]

IV. Special Instances

A. Assam Accord

In 1985, the central and state governments of India signed an accord with leaders of a movement that arose in opposition to the influx of "foreigners" from East Pakistan (what today is known as Bangladesh) in the state of Assam as a result of the the breakup of Pakistan.[18] Pursuant to the Assam Accord, a special provision known as section 6A was inserted into the Citizenship Act, 1955, which regularized or granted citizenship to foreigners from Bangladesh within a certain time period and excluded others. According to Constitutional Lawyer Gautam Bhatia,

> [s]ection 6A of the Citizenship Act – introduced through an amendment in 1985 – was the legislative enactment of the legal part of the Assam Accord. Section 6A divided "illegal" immigrants of Indian origin (i.e., those whose parents or grandparents were born in undivided India) who came into Assam from Bangladesh into three groups: those who came into the state before 1966; those who came into the state between 1966 and 25th March, 1971 (the official date of the commencement of the Bangladesh War); and those who came into the state after 1971. The first group (pre-'66) was to be regularised. The second group ('66 – '71) was to be taken off the electoral rolls, and regularised after ten

[13] *Acquisition of Indian Citizenship (IC)*, *supra* note 7 (construing Citizenship Act § 3(b)).

[14] *Id*. (construing Citizenship Act § 3(c)) (emphasis added).

[15] *Id*. (emphasis added).

[16] Citizenship Act § 5(1) (emphasis added).

[17] *Acquisition of Indian Citizenship (IC)*, *supra* note 7 (construing Citizenship Act § 4). For information on citizenship by descent for persons born prior to December 3, 2004, see AHMAD, *supra* note 10.

[18] Niraja Gopal Jayal, *Citizenship*, *in* THE OXFORD HANDBOOK OF THE INDIAN CONSTITUTION 171–72 (Sujit Choudhry et al. eds., 2016).

> years. The third group ('71-onwards) was to be detected and expelled in accordance with law.[19]

B. The Citizenship (Amendment) Bill, 2016

On July 19, 2016, a controversial amendment Bill,[20] the Citizenship (Amendment) Bill, 2016,[21] was introduced in the Lok Sabha, India's lower house of Parliament, and is currently under consideration by a joint parliamentary committee. The amendment seeks to exclude "persons belonging to minority communities, namely, Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Afghanistan, Bangladesh and Pakistan,"[22] from the definition of "illegal migrant" in the Citizenship Act, in order to allow persons from these communities to be eligible for Indian citizenship. The Amendment Bill would also relax the eleven-year "aggregate period of residence" requirement for citizenship by naturalization to six years for persons from these communities.[23]

---

[19] Gautam Bhatia, *The Constitutional Challenge to S. 6A of the Citizenship Act (Assam Accord): A Primer*, INDIAN CONSTITUTIONAL LAW AND PHILOSOPHY (May 7, 2017), https://indconlawphil.wordpress.com/2017/05/07/the-constitutional-challenge-to-s-6a-of-the-citizenship-act-assam-accord-a-primer/comment-page-1/, *archived at* https://perma.cc/77MG-TN4S.

[20] Lovish Garg, *If India Wants to Remain Secular, the New Citizenship Bill Isn't the Way to Go*, THE WIRE (Sept. 21, 2016), https://thewire.in/67272/citizenship-amendment-bill-2016/, *archived at* https://perma.cc/9M72-NFT4.

[21] Citizenship (Amendment) Bill, No. 172 of 2016, http://164.100.47.4/BillsTexts/LSBillTexts/Asintroduced/172_2016_LS_ENG.pdf, *archived at* https://perma.cc/RP2K-YLTS.

[22] *Id*. § 2.

[23] *Id*. § 4

Israel

Ruth Levush
Senior Foreign Law Specialist

SUMMARY Children born in Israel do not acquire citizenship automatically based on birth. Children of persons who do not have legal residence in Israel, whether born in or outside of Israel, are generally not eligible for resident status independent of their parents.

A temporary, one-time arrangement approved by the Israeli government in 2005 and amended in 2006 allowed the children of persons who entered Israel legally but overstayed their visas to qualify for permanent residence if they were assimilated into Israeli society and culture, were present in Israel and had been living in it continuously for at least six years, and had entered Israel before their fourteenth birthday. Additional requirements for qualification included fluency in Hebrew and completion of the first grade or a higher grade in Israel. Those who were granted permanent residence under this program may later be granted Israeli citizenship if they are present in Israel, are believed by the Minister of Interior to "identify with the State of Israel and its objectives," and serve or have family members who served on active duty in the Israel Defense Forces.

Regardless of whether they have resident status, the children of persons who do not have legal residence in Israel are entitled to certain health, social, and educational benefits in accordance with Israeli law and government programs. A special arrangement for private health insurance partially funded by the state applies to such children.

I. Introduction

Birth in Israel does not by itself bestow a right to Israeli citizenship.[1] Children born in Israel to nonresident foreign nationals, therefore, cannot acquire Israeli citizenship by birth alone. Nor can they be naturalized, as they do not comply with the naturalization requirement of being eligible for permanent residence.[2] The resident status of children who entered Israel after birth is generally tied to that of their parents.

Children in Israel who do not have legal resident status include those who were born in Israel as well as those who arrived legally but overstayed their visas, or those who arrived illegally, crossing undesignated border crossings.[3] Two main groups are recognized: the children of foreign workers, mainly caregivers from the Philippines who entered the country based on a

[1] Nationality Law, 5712-1952, § 4, SEFER HAHUKIM [SH] [BOOK OF LAWS (official gazette)] 5712, No. 95, p. 146, *as amended*.

[2] *Id.* § 5.

[3] NETA MOSHE, KNESSET INFORMATION AND RESEARCH CENTER (KIRC), EDUCATION SYSTEM SERVICES FOR THE POPULATION OF CHILDREN OF FOREIGNERS WITHOUT CIVIL STATUS 3 (Jan. 23, 2014), https://www.knesset.gov.il/mmm/data/pdf/m03357.pdf (in Hebrew), *archived at* https://perma.cc/528K-VGDY.

valid work visa but overstayed, and the children of "infiltrators" and asylum-seekers whose entry was not authorized.[4]

As a signatory to the Convention on the Rights of the Child,[5] Israel is committed to providing minors staying within its territory basic rights, including the right to an education, health care, and social welfare.[6] These requirements are implemented through domestic legislation and a variety of private and governmental programs.

After discussing the legal status of "infiltrators," this report describes an exceptional, one-time program offered in 2006 for granting legal residence to children and families of foreigners who entered Israel legally but overstayed their visas. It provides information on a possible path to citizenship for those qualified under this program. The report also addresses social and economic benefits enjoyed by all children who do not have legal resident status in Israel.

II. Legal Status of "Infiltrators"

In accordance with Law for the Prevention of Infiltration, 5714-1954, an "infiltrator" is a nonresident who entered Israel through an undesignated land crossing as determined by the Minister of Interior.[7] Tens of thousands of African migrants entered Israel illegally via undesignated land crossings from Egypt between 2006 and 2016. Most of these migrants were Eritrean and Sudanese nationals claiming to have escaped political persecution in their countries.[8] At the end of 2016 there were 37,016 "infiltrators" in Israel, not including children born to them.

According to Israeli military sources the number of individuals unlawfully entering Israel through its border with Egypt has greatly declined due to the construction of a barrier on the border with Egypt.[9] A Knesset report provides that there were only eighteen successful attempts to illegally cross the border in 2016.[10]

Only a small number of the Eritrean or Sudanese "infiltrators" in Israel have received refugee status; the remainder are subject to a policy of temporary nonremoval. Some of these

---

[4] *Id*. For a definition and discussion of applicable rules for "infiltrators," see discussion, *infra*.

[5] Convention on the Rights of the Child, Nov. 20, 1989, http://www.ohchr.org/Documents/Professional Interest/crc.pdf, *archived at* https://perma.cc/383L-4SRJ.

[6] MOSHE, EDUCATION SYSTEM SERVICES, *supra* note 3, at 4.

[7] Law for the Prevention of Infiltration (Offenses and Jurisdiction), 5714-1954, §1, SH 5714, No. 161, p. 160, *as amended*.

[8] For further information, see RUTH LEVUSH, REFUGEE LAW AND POLICY: ISRAEL (Law Library of Congress, Mar. 2016), https://www.loc.gov/law/help/refugee-law/israel.php, *archived at* https://perma.cc/3YPL-5QNN.

[9] Anna Ahronheim, *Israel Completes Heightened Egypt Border Fence*, JERUSALEM POST (Jan. 18, 2017), http://www.jpost.com/Israel-News/Israel-completes-heightened-Egypt-border-fence-478840, *archived at* https://perma.cc/8ZMF-4K2Y.

[10] NETA MOSHE, KIRC, INCLUSION OF NON-REMOVABLE FOREIGNERS IN THE HEALTH BASKET – COST ESTIMATE *2* (Mar. 19, 2017), https://www.knesset.gov.il/mmm/data/pdf/m03926.pdf (in Hebrew), *archived at* https://perma.cc/ZVZ4-K8TF.

"nonremovable foreigners" (NRFs) have stayed in Israel ten years or longer.[11] Although not afforded legal resident status, NRFs and their children enjoy certain benefits, including health care and education.[12]

The impact of the presence of NRFs on public security and on the state budget has been the subject of a review by the State Comptroller's Office.[13] A focus of continuous public debate, the nonremoval of "infiltrators" and their children, and the conditions of their stay in Israel, has been reviewed by various Knesset committees and by the Supreme Court.[14]

III. Residence and Path to Citizenship for Children of Persons Who Overstayed Their Visas

As noted, the children of persons who do not have legal residence in Israel are not eligible for such status independent of their parents. In 2005, however, the government issued a limited, one-time temporary arrangement, amended in 2006, whereby the children of persons who entered Israel legally but overstayed their visas could apply for resident status under the Temporary Arrangement for Grant of Status for Children of Illegal Residents, Their Parents and Siblings Who are Staying in Israel (TAGS).[15] The implementation of TAGS resulted in the grant of permanent residence to 500 out of 827 applicants.[16]

As legal residents, those who qualified for residency under TAGS could in principle later be granted citizenship, under conditions specified in the Nationality Law, 5712-1952, if they or their family members served in the Israel Defense Forces (IDF).[17]

A. Conditions for Grant of Permanent Residence under TAGS

TAGS provided permanent residence to a select group of children of persons who entered Israel lawfully but outstayed their visas. As expressly stated in the 2006 Government Decision announcing TAGS, this was a temporary, one-time arrangement that did not reflect any change in the Israeli government position with regard to immigration.[18] The Government Decision implementing TAGS provided as follows:

---

[11] *Id*.

[12] For information on the law governing refugees and "infiltrators," see LEVUSH, *supra* note 8.

[13] STATE COMPTROLLER AND OMBUDSMAN OF ISRAEL, NON-REMOVABLE FOREIGNERS: ANNUAL REPORT 64C FOR 2012–13, http://www.mevaker.gov.il/he/Reports/Pages/248.aspx (in Hebrew), *archived at* https://perma.cc/AAN4-XGTU.

[14] *See*, *e.g.*, Adm. App. 8101/15 Tsagata v. Minister of Interior (Supreme Court, Aug. 28, 2017), http://elyon1.court.gov.il/files/15/010/081/c29/15081010.c29.pdf (in Hebrew), *archived at* https://perma.cc/39JK-8BM5.

[15] TAGS, Government Decision No. 156 (June 18, 2006), http://www.pmo.gov.il/Secretary/GovDecisions/2006/Pages/des156.aspx (in Hebrew), *archived at* https://perma.cc/6C2B-DGW7.

[16] *Ministry of Interior Arranges Status of Children of Illegal Residents*, GLOBES (June 18, 2007), http://www.globes.co.il/news/article.aspx?did=1000222748 (in Hebrew), *archived at* https://perma.cc/438G-Q5CU.

[17] Nationality Law, 5712-1952, § 9, SH 5712, No. 95, p. 146, *as amended*.

[18] TAGS, *supra* note 15, § C.

A. The Minister of Interior is authorized to grant a **license for permanent residence** in Israel to the children of illegal residents, who have **assimilated into Israeli society and its culture** (hereafter: "the child") upon their request, as long as they have fulfilled all the following conditions:

1) At the time of adoption of this decision the **child is present in Israel** and has been **living in it continuously for a period of at least 6 years,** as long as she/he has **entered Israel before the age of 14 . . . .**

2) The **child's parents entered Israel lawfully** under a permit and a license under the Entry into Israel Law, 5712-1952, **prior to the date of [the child's] birth or entry** into Israel.

3) The **child speaks the Hebrew language**.

4) **At the time of adoption of this decision the child has been studying in first grade or a higher grade in a school in Israel, or has graduated from** his/her said studies.

5) To meet the requirements of this arrangement the requesters will be required to produce clear evidence to substantiate their request, including by way of a hearing, and including production of **documentation** regarding their place of residence in Israel, the date of entry into or birth in Israel, and the place of education in Israel.

B. The Minister of Interior may bestow a license for **temporary residence** in Israel **to** the **child's parents and siblings,** as long as those [persons] have **resided** with him/her **in a joint household in Israel** consecutively from the date of his/her birth or entry into Israel **and are present in Israel at the time of adoption of this decision**. A short exit for a visit outside of Israel shall not constitute a break in continuous [stay] for purposes of this provision.

In the absence of any other reason the temporary residence permit of [the child's] **family members** . . . will be **extended on an annual basis** until the **child** has reached the **age of 21.** At this time they will be **able to request a permit for permanent residence**, as long as their status has not been regulated as part of the decisions of the Ministerial Committee . . . regarding a grant of status for both parents of a soldier.[19]

TAGS did not apply to persons regarding whom there were criminal or security concerns.[20]

B. Path to Citizenship for TAGS Beneficiaries

Those who were granted permanent residence under TAGS may be granted Israeli citizenship if they are present in Israel, are believed by the Minister of Interior to "identify with the State of Israel and its objectives," and serve or have family members who have served in active duty in the Israel Defense Forces.[21]

---

[19] *Id.* §§ A & B (translation and emphasis by author, R.L.).

[20] *Id*. § C.

[21] Nationality Law, 5712-1952, § 9, SH 5712, No. 95, p. 146, *as amended*.

IV. Health Care Services

A. General Services

Every legal resident in Israel is insured under the National Health Insurance Law, 5754-1994 (NHIL).[22] Not recognized as residents, NRFs are not covered under the NHIL but are entitled to emergency care in accordance with the Patient's Rights Law, 5756-1996.[23] NRFs reportedly receive emergency hospital care, including medical care in emergency rooms and hospitalization in urgent cases, including surgeries, births, and intensive care for premature babies.[24]

Additional services freely provided to NRFs include

- abortions for minors and rape victims,
- well-visits for mothers and babies in infants' clinics,
- routine immunizations and development follow-ups for babies,
- treatment of sexually transmitted diseases in the Tel-Aviv Levinsky Clinic,
- diagnosis and care for tuberculosis,
- medical care for victims of human trafficking,
- medical care for those staying in the Holot NRFs facility,
- a community program for treatment of HIV/AIDS, and
- dialysis and medication treatment for diabetes patients.[25]

Two additional clinics designated for "foreigners" operate in Tel-Aviv, where a large community of NRFs resides, with partial funding from the Ministry of Health. One of those clinics specializes in mental health.[26]

Privately funded services for foreigners are also operating in Israel. These include a clinic operated by Physicians for Human Rights, hospital funds that support medical treatment to foreigners, and private doctors who provide care on a voluntary basis. Private health insurance policies may also be available.[27]

---

[22] National Health Insurance Law, 5754-1994, §3, SH 5754, No. 1469, p. 156, *as amended*.

[23] Patient's Rights Law, 5756-1996, SH 5756, No. 1591, p. 327, § 3, *as amended*.

[24] MOSHE, INCLUSION OF NON-REMOVABLE FOREIGNERS IN THE HEALTH BASKET, *supra* note 10, at 2.

[25] *Id*. at 3.

[26] *Id*.

[27] *Id*. at 4.

B. Health Insurance for Minors through the United Health Fund

As noted, the children of foreigners, including those born to NRFs, enjoy free, routine well-visits and immunizations. Under a voluntary agreement with United Health Fund, one of the licensed public health funds permitted to provide health services under the NHIL, parents may acquire insurance for their children. This includes NRFs or other foreigners whose stay in Israel is unauthorized, such as foreign workers and tourists whose visas have expired. In accordance with data provided by the Ministry of Health, at the end of 2016 there were 6,772 nonresident minors insured under this arrangement.[28]

In accordance with the arrangement with United Health Fund, in 2016 the cost for a policy for a minor was 280 New Israeli Shekels (NIS) (approx. US$80), with parents having to pay NIS 120 (approx. US$34) to NIS 240 (approx. US$68), and the Ministry of Health adding NIS 160 (approx. US$45). The Ministry pays in full beginning with the third child.[29] Minors insured under this arrangement are entitled to almost identical services given to Israeli residents under the National Health Insurance Law, excluding services provided abroad, with receipt of medical care requiring a copay similar to the one required from all residents.[30]

V. Educational Services

All children living in Israel, including the children of foreign workers, are entitled to education in accordance with the Compulsory Education Law, 5709-1949, regardless of the resident status of their parents.[31] Children of NRFs are not entitled to remedial lessons, however.[32]

---

[28] *Id*.

[29] *Id*. at 4–5 (citing information received from the Ministry of Health).

[30] *Id*. at 5.

[31] Compulsory Education Law, 5709-1949, SH No. 26, p. 287, *as amended*.

[32] For challenges faced by local municipalities with NRFs population see MOSHE, EDUCATION SYSTEM SERVICES, *supra* note 3.

Italy

Dante Figueroa
Senior Legal Information Analyst

SUMMARY No specific legal or regulatory provisions addressing the particular situation of undocumented persons who were brought into Italy as minors were found. Such persons are subject to the general rules concerning the granting of residence permits and the acquisition of Italian citizenship. According to the circumstances, certain of such persons may acquire Italian citizenship automatically (by reason of descent from Italian citizens, abandonment in the country, judicial recognition, or adoption). Foreign unaccompanied minors are subject to special rules concerning the issuance of residence permits. Otherwise, the general rules allowing the government to grant Italian citizenship by decree to stateless persons or to those who have resided legally in the country for the required statutory period may apply.

I. Acquisition of Italian Citizenship by Foreigners

A. Applicable Legislation

Currently, the acquisition, loss, and reacquisition of Italian citizenship is regulated by Law No. 91 of 1992[1] and its implementing regulations (Decree No. 572 of 1993,[2] Decree No. 362 of 1994,[3] and Legislative Decree No. 286 of July 25, 1998[4]), and most recently by Law No. 47 of 2017.[5] This legislation specifically addresses the acquisition of Italian citizenship by several

[1] Legge 5 febbraio 1992, n. 91 Nuove norme sulla cittadinanza [Law No. 91 of February 5, 1992, New Rules on Citizenship], GAZZETTA UFFICIALE [G.U.] No. 38, Feb. 15, 1992, up-to-date version *available at* http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:1992-02-05;91!vig, *archived at* https://perma.cc/S3KX-ZUQA.

[2] Decreto del Presidente della Repubblica di 12 ottobre 1993, n. 572, Regolamento di esecuzione della legge 5 febbraio 1992, n. 91, recante nuove norme sulla cittadinanza [Decree of the President of the Republic of October 12, 1993, No. 572, Regulations for the Implementation of Law No. 91 of February 5, 1992, Concerning New Rules on Citizenship], G.U. No. 2, Jan. 4, 1994, http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.del.presidente.della.repubblica:1993-10-12;572!vig, *archived at* https://perma.cc/X33R-V534.

[3] Decreto del Presidente della Repubblica di 18 aprile 1994, n. 362, Regolamento recante disciplina dei procedimenti di acquisto della cittadinanza italiana [Decree of the President of the Republic of April 18, 1994, No. 362, Regulations on Procedures for the Acquisition of Italian Citizenship], G.U. No. 136, June 13, 1994, http://www.normattiva.it/atto/caricaDettaglioAtto?atto.dataPubblicazioneGazzetta=1994-06-13&atto.codiceRedazionale=094G0368, *archived at* https://perma.cc/ZF3K-U6XM.

[4] Decreto Legislativo 25 luglio 1998, n. 286 Testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero [Legislative Decree No. 286 of July 25, 1998, Single Text of the Provisions concerning Immigration and the Condition of Aliens], G.U. Aug. 18, 1998, No. 191, www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:1998-07-25;286!vig, *archived at* https://perma.cc/S6K9-MKAG.

categories of persons, among them, by foreigners who wish to become Italian citizens.[6] This legislation also deals with the granting of residence permits.

No legislation specifically addressing the situation of children who were brought into Italy outside of the regular immigration process was found. Provisions related to the acquisition of Italian citizenship which may be relevant to persons who were brought into Italy illegally are reviewed below.

B. Automatic Acquisition of Italian Citizenship

Minors brought into the country outside of the regular immigration process may automatically acquire Italian citizenship in any of the following situations:

- When they descend from an Italian citizen[7] (minor children living with their parents when the parents acquire or reacquire Italian citizenship also automatically acquire citizenship);[8]
- When they have been abandoned in the Italian territory and their citizenship is impossible to determine;[9]
- By voluntary or judicial recognition of filiation by/with an Italian citizen[10] (adult children have a right to opt for Italian citizenship within one year from recognition of their filiation);[11]
- Through adoption by an Italian parent or through an adoption made overseas that is recognized under Italian laws[12] (adopted adult children have a right to opt for Italian citizenship after five years of legal residence in Italy from the date of adoption).[13]

II. Special Situation of Unaccompanied Foreign Minors

Recently, Law No. 47 of 2017 was enacted to protect foreign minors who enter Italy without an adult by recognizing the same rights for them that Italian and European Union minors have, due to their particular situation of vulnerability.[14] A foreign unaccompanied minor is defined as a

---

[5] Legge 7 aprile 2017, n. 47 Disposizioni in materia di Misure di Protezione dei Minori Stranieri non Accompagnati [Law No. 47 of April 7, 2017, Provisions concerning the Protection of Unaccompanied Foreign Minors], G.U. No. 93, Apr. 21, 2017, http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:2017-04-07;47!vig, *archived at* https://perma.cc/WXT5-5S5V.

[6] *See Cittadinanza* [*Citizenship*], MINISTERO DEGLI AFFARI ESTERI, http://www.esteri.it/MAE/IT/Italiani_nel_Mondo/ServiziConsolari/Cittadinanza.htm (last visited Sept. 14, 2017), *archived at* https://perma.cc/H5SP-P7U4.

[7] Law No. 91 of 1992, art. 1(1)(a).

[8] *Id.* art. 2(1).

[9] *Id.* art. 1(2).

[10] *Id.* art. 2(1).

[11] *Id.* art. 2(2).

[12] *Id.* art. 3(1).

[13] *Id.* art. 9(1)(b).

[14] Law No. 47, art. 1(1).

minor who is not an Italian or EU citizen who, for whatever reason, is found in Italian territory or is subject to Italian jurisdiction, and who lacks the assistance or representation of his/her parents or other adults who would be responsible for him/her according to Italian legislation.[15] Foreign unaccompanied minors may never be rejected at the border, and refoulement and expulsion are prohibited.[16] When a foreign unaccompanied minor first comes into contact with a government official, an inquiry must be made to determine the personal and family history of the minor in order to adopt the best protective measures.[17]

Residence permits may be issued to foreign unaccompanied minors for reasons of study or access to employment/self-employment at the age of majority (eighteen), provided that no decision to the contrary has been made by the Committee for Foreign Minors created by Legislative Decree No. 286 of 1998,[18] when such minors have been admitted for a period of not less than two years in a social and civil integration project managed by a public or private entity with national representation, and have been registered in a special registry established by the law for residence permits for minors under care up to the age of majority.[19]

In these cases, the local city administrator (*questore*) must grant a residence permit to the foreign minor.[20] Such a permit must also be granted to any foreign unaccompanied minor who is fourteen years of age or younger based on family-reunion grounds, to those minors subject to the custody of an Italian citizen with whom they live, or to minors older than fourteen years of age and in the custody of and living with foreigners who are legal residents of Italy.[21] In exceptional cases when the expulsion of a foreign minor is ordered by the juvenile court, such a measure may be adopted only if it does not cause a risk of serious harm to the minor.[22]

The local juvenile court will order the assisted and voluntary repatriation of a foreign unaccompanied minor when the reunion of the child with his or her family in the country of origin or in a third country is in the best interests of the child.[23]

---

[15] *Id*. art. 2(1).

[16] *Id*. arts. 3(1)(a) & 3(1)(b).

[17] *Id*. art. 5(1).

[18] Legislative Decree No. 286 of 1998, art. 33.

[19] Legge 30 luglio 2002, n. 189 Modifica alla normativa in materia di immigrazione e di asilo [Law No. 189 of July 30, 2002, Amending the Law on Immigration and Asylum] art. 25, *amending* Legislative Decree No. 286 of July 25, 1998, art. 32(1-bis), G.U. No. 199, Aug. 26, 2002, http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:2002-07-30;189!vig, *archived at* https://perma.cc/PDA2-7FE9.

[20] *Id*. art. 10(1)(a).

[21] *Id*. art. 10(1)(b).

[22] *Id*. arts. 3(1)(a) & 3(1)(b).

[23] *Id*. art. 8(1).

III. Acquisition of Italian Citizenship by Residence

Provided that they fulfill the established criteria, persons who have been brought to Italy as minors are also eligible for Italian citizenship, by decree of the President of the Republic at the proposal of the Ministry of Internal Affairs, after hearing the Council of State, when such minors are found in either of these two categories: (1) they are stateless and have resided in the Italian territory for at least five years; or (2) they have resided legally in the Italian territory for at least ten years.[24]

[24] Law No. 91 of 1992, art. 9(1)(e) & (f).

Japan

Sayuri Umeda
Foreign Law Specialist

SUMMARY Children of illegal foreign residents may stay in Japan legally when they obtain special permission to stay from the government. Even when staying in Japan illegally, they may attend Japanese public elementary and secondary schools for free. There is no special path to obtain nationality for them. To be naturalized, they must first stay in Japan legally.

I. Introduction

Japan's population is approximately 126.8 million.[1] As of January 1, 2017, the estimated number of overstayed foreigners in Japan was 65,270.[2] In addition, there are an unknown number of foreigners in the country who entered without immigration procedures.[3] Together both groups of foreigners are collectively referred to as "illegal foreign residents" or "illegally staying persons" (不法滞在者).

When a person's illegal status is discovered by an immigration office, deportation procedures are initiated.[4] An illegal foreign resident may be able to stay in Japan legally only if he or she obtains special permission from the Minister of Justice.[5] Article 50, paragraph 1 of the Immigration Control and Refugee Recognition Act (Immigration Act) states as follows:

> The Minister of Justice may . . . grant the suspect special permission to stay in Japan if the suspect falls under any of the following items:
>
> (i) He or she has obtained permission for permanent residence.
> (ii) He or she has had in the past a registered domicile in Japan as a Japanese national.
> (iii) He or she resides in Japan under the control of another as a result of trafficking in persons.

---

[1] 人口推計（平成 29 年(2017 年)3 月確定値，平成 29 年 8 月概算値） [*Estimated Population (March 2017 Final Number, August 2018 Approximate Number)*], STATISTICS JAPAN (Aug. 21, 2017), http://www.stat.go.jp/data/jinsui/new.htm, *archived at* https://perma.cc/XBA3-WSEB.

[2] 本邦における不法残留者数について（平成 29 年 1 月 1 日現在） [*Regarding Number of Overstaying People in Japan (as of January 1, 2017)*], MINISTRY OF JUSTICE (Mar. 17, 2017), http://www.moj.go.jp/nyuukokukanri/kouhou/nyuukokukanri04_00066.html, *archived at* https://perma.cc/HQD9-JXBP.

[3] 不法入国･不法滞在に係る諸問題 [Various Issues Relating to Illegal Entry and Overstay], 焦点 [Shoten] No. 269, ch. 2, § 8 (2004), https://www.npa.go.jp/archive/keibi/syouten/syouten269/sec02/sec02_08.htm, *archived at* https://perma.cc/8WEG-5SQA.

[4] Immigration Control and Refugee Recognition Law (Immigration Control Law), Order No. 319 of 1951, *last amended by* Law No. 79 of 2009, arts. 24, 39, & 45, http://www.japaneselawtranslation.go.jp/law/detail_main?re=02&ia=03&vm=02&id=2647, *archived at* https://perma.cc/N9YW-C2WF.

[5] *Id*. art. 50.

(iv) The Minister of Justice finds grounds for granting special permission to stay, other than the previous items.

This decision is made individually with respect to each case based on comprehensive consideration of various factors, including the reason for stay, family conditions in Japan, the person's conduct, the person's current situation both at home and abroad, the need for humanitarian considerations, and the impact on other illegal residents.[6] To enhance the transparency and predictability of special permission to stay, the Immigration Bureau released Guidelines on Special Permission to Stay in Japan,[7] which list the positive and negative factors taken into account, in addition to items (i) to (iii) above, which are positive elements.[8]

II. Children of Illegal Foreign Residents

Non-Japanese children are not subject to the mandatory school education requirement in Japan.[9] However, the government has established a policy, in the spirit of the 1966 International Covenant on Economic, Social and Cultural Rights[10] and the 1990 Convention on the Rights of the Child[11], that if parents or guardians of foreign children wish to enroll them in Japanese schools, public primary and secondary schools must accept them. Such foreign students can enjoy free tuition and textbooks during mandatory education at public schools in Japan, the same as Japanese children.[12] This policy applies to children irrespective of their legal status of stay.[13]

Occasionally the threatened or actual deportation of the children of illegal foreign residents who have been raised and attended school in Japan receives public attention. In 2009, a Filipino girl's parents were deported, but the girl, who was thirteen years old, was permitted to stay in Japan for one year by special permission of the Minister of Justice.[14] She could not speak Tagalog,[15] and

---

[6] IMMIGRATION BUREAU, MOJ, 2011 IMMIGRATION CONTROL 100 (2011), http://www.moj.go.jp/content/000081972.pdf, *archived at* https://perma.cc/G76Z-H42U.

[7] IMMIGRATION BUREAU, MOJ, 2016 IMMIGRATION CONTROL 88 (2016), http://www.moj.go.jp/content/001211228.pdf, *archived at* https://perma.cc/N3QB-BNG5.

[8] Immigration Bureau, Ministry of Justice, Guidelines on Special Permission to Stay in Japan (Oct. 2006, revised July 2009), http://www.moj.go.jp/content/000048156.pdf, *archived at* https://perma.cc/98RR-9RSK.

[9] Basic Education Law, Act No. 120 of 2006, art. 4. This provision states that Japanese nationals are obligated to have children under their custody to receive ordinary education.

[10] International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, S. Treaty Doc. No. 95-19, 6 I.L.M. 360 (1967), 993 U.N.T.S. 3.

[11] Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3.

[12] 外国人の子どもの公立義務教育諸学校への受入について [*Regarding Acceptance of Foreign Children to Public Mandatory Education Schools*], MINISTRY OF EDUCATION, CULTURE, SPORTS, SCIENCE AND TECHNOLOGIES, http://www.mext.go.jp/b_menu/shingi/chousa/shotou/042/houkoku/08070301/009/005.htm (last visited Sept. 18, 2017), *archived at* https://perma.cc/ZZT2-X2SA.

[13] JAPAN FEDERATION OF BAR ASSOCIATIONS, 非正規滞在外国人に対する行政サービス [ADMINISTRATIVE SERVICES FOR ILLEGAL FOREIGN RESIDENTS] 3 (Feb. 2016), https://www.nichibenren.or.jp/library/ja/publication/booklet/data/gyosei_serv_pam_ja.pdf, *archived at* https://perma.cc/NY4J-WLLV.

[14] *Calderon Couple Exit Japan*, JAPAN TIMES (Apr. 14, 2009), https://www.japantimes.co.jp/news/2009/04/14/national/calderon-couple-exit-japan/, *archived at* https://perma.cc/A4NY-FWDP.

she had an aunt to stay with in Japan.[16] When she entered high school, her status of stay was changed to "student."[17] Her living expenses were funded by contributions from the general public.[18]

In the case of a boy of a Thai mother who stayed in Japan illegally, special permission to stay was not granted. The child was an out-of-wedlock child of Thai parents. He was born and raised in Japan, but did not go to elementary school. Both his Thai and Japanese language skills were poor. However, he received special education support from a nongovernmental organization and enrolled in middle school in Japan in 2013, then subsequently enrolled in high school. When he appealed the Immigration Office's decision that refused special permission to stay, the district court suggested that if his mother went back to Thailand voluntarily and he could find a guardian in Japan, the decision could be reconsidered. Though the mother returned to Thailand, it appears that there was no legal guardian for the boy at the time of the high court decision confirming the denial of special permission in December 2016.[19] According to a news article, the boy planned to stay with one of his supporters in Japan and file a special permission application again.[20]

III. Path to Citizenship

The Japanese Nationality Law is based on lineage. A child whose father or mother is a Japanese national at the time of his or her birth acquires Japanese nationality.[21] Therefore, birth within Japanese territory does not enable a person to acquire Japanese nationality. A person who is not a Japanese national (foreigner) may acquire Japanese nationality by naturalization.[22] In general, the following conditions are required for naturalization:

---

[15] カルデロン・ノリコさん一家の在留問題に関する会長声明 [*Declaration of Chairman Regarding Noriko Calderon Family's Stay*], TOKYO BAR ASSOCIATION (Mar. 17, 2009), https://www.toben.or.jp/message/seimei/post-143.html, *archived at* https://perma.cc/4KSQ-UGN9.

[16] *Girl Chooses Japan over Parents*, BBC (Apr. 14, 2009), http://news.bbc.co.uk/2/hi/asia-pacific/7998048.stm, *archived at* https://perma.cc/Q82G-NTGQ.

[17] のりこ基金会計ご報告 [*Report on Accounting of Noriko Foundation*], カルデロン・アラン・クルズ一家に在留特別許可を！[SPECIAL PERMISSION FOR CALDERON ARLAN CRUZ FAMILY!] (Aug. 4, 2011), http://blog.goo.ne.jp/izumibashilaw/e/b5b009d2f7c45e2c957a4e669e8ecfcd, *archived at* https://perma.cc/G78J-YU53.

[18] *Id.*;のりこ基金会計報告（2017年上半期）[*Report on Accounting of Noriko Foundation (First Half of 2017)*], SPECIAL PERMISSION FOR CALDERON ARLAN CRUZ FAMILY! (Aug. 1, 2017), http://blog.goo.ne.jp/izumibashilaw/e/38b3f745e2dffb9b3010862b25869843, *archived at* https://perma.cc/WZX4-ZBAE.

[19] 日本で生まれ育ったタイ人高校生の未来は、強制退去なのか。司法への問いかけは続く, HUFFINGTON POST (Dec. 19, 2017), http://www.huffingtonpost.jp/2016/12/16/utinan-to-supreme-court_n_13670708.html, *archived at* https://perma.cc/Y69L-UHLM.

[20] 上告を取り下げ　生徒の敗訴確定 / 山梨, タイ人在留訴訟 [*Withdrew an Appeal, Student's Loss Confirmed / Yamanashi, Thai's Stay Case*], MAINICHI (Jan. 19, 2017), https://mainichi.jp/articles/20170119/ddl/k19/040/023000c.

[21] Nationality Act, Act No. 147 of 1950, *amended by* Act No. 88 of 2008, art. 2, http://www.japaneselawtranslation.go.jp/law/detail_main?re=02&ia=03&vm=02&id=1857, *archived at* https://perma.cc/XS45-MLCF.

[22] *Id*. art. 4.

A foreigner must

1. have been domiciled in Japan for five years or more consecutively;
2. be twenty years old or older and of full capacity to act according to the law of his or her home country;
3. be of upright conduct;
4. be able to secure a livelihood by his or her own property or ability, or those of his or her spouse or other relatives with whom he or she lives on common living expenses;
5. lose other nationalities, if he or she has any, by the acquisition of Japanese nationality; and
6. have never plotted, advocated, or been involved with a political party or other organization that has plotted or advocated the overthrow of the Constitution of Japan or the Japanese government.[23]

A foreigner may be exempted from one or several items if other conditions are met. Especially in cases where a foreigner has a Japanese spouse or other family relations in Japan, the requirements for naturalization are relaxed.

Regarding the requirement of five years' domicile in Japan, a person is deemed to be domiciled in Japan only when he or she lives in Japan legally.[24] Therefore, the children of illegal foreign residents cannot become naturalized until they have obtained legal resident status, such as special permission to stay in Japan, and the required time has passed.

[23] *Id*. art. 5.

[24] 木棚照一 [SHOICHI KIDANA], 国籍法 [NATIONALITY LAW] 260 (2003), *bibliographic information at* https://lccn.loc.gov/2004389772.

Mexico

Gustavo Guerra
Senior Foreign Law Specialist

SUMMARY Foreign children and adolescents under eighteen years of age who are found in Mexico without the company of a family member or a legal guardian may be granted a temporary immigration status while authorities determine the most appropriate course of action applicable to them based on the specifics of their respective cases. Alternatives include granting them refugee status, returning them to their countries of origin, if appropriate, or regularizing their status, as explained below. Migrants in general may have access to education and health services pursuant to applicable requirements, regardless of their immigration status. Mexico's Constitution provides that those born in the Mexican territory are Mexicans by birth, regardless of the nationality of their parents.

I. Treatment of Certain Minors under the Migration Law

Although Mexico's Law on Migration does not appear to provide for a status with eligibility requirements similar to those provided by the US DACA program, the Law does provide for a status applicable to unaccompanied children and adolescents. Specifically, unaccompanied children and adolescents may be granted a temporary immigration status (Visitor on Humanitarian Grounds) while immigration authorities determine the most appropriate course of action applicable to them based on the specifics of their respective cases (including granting them refugee status, returning them to their countries of origin, if appropriate, or granting them regularization of their status provided that applicable requirements are met, as explained below).[1] Foreign children and adolescents under eighteen years of age who are in Mexico without the company of a family member or a legal guardian are eligible for this status.[2]

Procedures applicable to the treatment and determination of the status of these children may include

- placing the child in an institution qualified to provide adequate care for children;
- interviewing the child in order to obtain pertinent information, such as his/her identity, country of origin, migration status, family whereabouts, and particular needs as to medical and psychological care; or

[1] Ley de Migración [Law on Migration] arts. 52 (V-b), 74, 112, DIARIO OFICIAL DE LA FEDERACIÓN [D.O.], May 25, 2011, available as amended through May 2017 on the website of Mexico's House of Representatives, *at* http://www.diputados.gob.mx/LeyesBiblio/pdf/LMigra_190517.pdf, *archived at* https://perma.cc/8NJJ-EN8N. Immigration and nationality are regulated in Mexico by a number of statutes and a wide variety of regulations whose applicability depends upon the specifics of a given case. This report provides a brief summary of key provisions of Mexican law, but other rules may be pertinent depending on the specifics of the case in question.

[2] *Id.* art. 3 (XVIII).

- notifying the consulate of the child's country of origin of the pertinent proceedings in order to request assistance in locating the parents of the child and collaborate in returning the child to his/her country, if applicable.[3]

II. Regularization

As stated above, unaccompanied children and adolescents may be eligible to benefit from the general rules governing regularization of foreigners if it is determined that they qualify for this option.[4] Such rules provide that foreigners whose migration status is irregular may apply to regularize their status provided that applicable requirements are met.[5] More specifically, these foreigners residing in Mexico are eligible to apply for regularization of their status if they

- prove that they are married to a Mexican national or legal resident in Mexico;
- prove that they have Mexican children or parents (or that these relatives are legal residents in Mexico), or are guardians of Mexican nationals or legal residents in Mexico;
- are identified by Mexican authorities as victims of or witnesses to a serious crime committed in Mexico;
- have a level of vulnerability that makes it difficult or impossible for them to be deported; or
- are children and adolescents subject to international abduction and restitution procedures.[6]

In addition, foreigners who have overstayed their immigration permits, have engaged in activities different from those authorized, or simply lack the necessary documentation to prove regular status may apply to regularize their status provided that applicable requirements are met.[7] Generally, foreigners who wish to apply for regularization of their status must

- submit a statement to Mexico's National Institute of Migration requesting regularization of status and explaining the irregularities incurred by the applicant;
- present an official identification document;
- provide documentation of a relationship with a Mexican national or legal resident in Mexico if the application is based on such a relationship;
- in the case of foreigners who overstay their immigration permits, present their expired documentation and apply for status within sixty days after such expiration occurred;
- pay a fine; and

[3] *Id*. art. 112.

[4] *Id*. art. 112 (V).

[5] *Id*. arts. 3 (XXVIII), 132, 133.

[6] *Id*. art. 133.

[7] *Id*. arts. 132, 134.

- fulfill the requirements applicable to the particular status that the foreigner wishes to obtain[8] (a number of which include permission to work in Mexico temporarily).[9]

III. Benefits for Migrants in General

The Law on Migration provides a number of rights applicable to migrants in general, including the right to receive any urgent medical service necessary to preserve their lives at no cost and without restriction, regardless of their immigration status.[10] Also, the Law allows migrants to have access to education and health services provided by the public and private sectors pursuant to applicable requirements, regardless of their immigration status.[11]

IV. Refugees

Applicants for refugee status may obtain a temporary visitor status in Mexico while their applications are processed.[12] If refugee status is granted, the applicant obtains permanent residency, which includes a permit to work in Mexico.[13]

V. Nationality

Mexico's Nationality Law provides that a foreigner who wants to apply for naturalization must demonstrate that he/she has resided legally in Mexico for at least five years immediately preceding the filing of the application.[14] This period of residency in Mexico may be reduced to two years if the applicant

- is a direct descendant of a Mexican national by birth;
- has children who are Mexican nationals by birth;
- is a native of a Latin American country or the Iberian Peninsula;
- has been married to a Mexican national and has lived in Mexico with his/her Mexican spouse for two years; or

---

[8] *Id*. arts. 134, 135.

[9] *Id*. art. 52.

[10] *Id*. art. 8.

[11] *Id*.

[12] *Id*. art. 52(V-c).

[13] *Id*. arts. 52(V-c), 54.

[14] Ley de Nacionalidad [Law on Nationality], *as amended through* 2012, art. 20, D.O., May 25, 2011, http://www.diputados.gob.mx/LeyesBiblio/pdf/53.pdf, *archived at* https://perma.cc/839P-V3BB. *See also* Reglamento de la Ley de Nacionalidad [Regulation of the Law of Nationality], *as amended through* 2013, art. 14, D.O., June 17, 2009, http://www.diputados.gob.mx/LeyesBiblio/regley/Reg_LNac.pdf, *archived at* https://perma.cc/L9H7-GGJD.

- has provided a service that is beneficial to Mexico in the fields of culture, society, science, art, sports, or business, subject to the discretion of Mexico's Department of Foreign Affairs.[15]

The five-year period of residency in Mexico may be reduced to one year if the applicant for naturalization is adopted by a Mexican national.[16] In addition to the period of residency, applicants for naturalization are required to speak Spanish, demonstrate knowledge of the history of Mexico and integration into its culture, take an oath of allegiance to Mexico, renounce any other nationality, and submit a naturalization application to Mexico's Department of Foreign Affairs.[17] An application for nationality may be denied if the applicant is in prison for committing an intentional crime in Mexico or abroad.[18]

VI. Status of Children Born in Mexico

Mexico's Constitution provides that those born in Mexican territory are Mexicans by birth, regardless of the nationality of the parents.[19] According to Mexico's National Commission for Human Rights, this right is also applicable to children born in Mexico to foreign parents regardless of the parents' legal status.[20]

[15] Ley de Nacionalidad art. 20.

[16] *Id*.

[17] *Id*. art. 19.

[18] *Id*. art. 25.

[19] CONSTITUCIÓN POLÍTICA DE LOS ESTADOS UNIDOS MEXICANOS [POLITICAL CONSTITUTION OF THE MEXICAN UNITED STATES], *as amended through* 2017, art. 30(A)–(I), D.O., Feb. 5, 1917, http://www.diputados.gob.mx/LeyesBiblio/pdf/1_240217.pdf, *archived at* https://perma.cc/BH76-5QAZ.

[20] *Derechos de las Personas Migrantes: Derecho a la Nacionalidad*, COMISIÓN NACIONAL DE LOS DERECHOS HUMANOS, http://www.cndh.org.mx/Derecho_Migrantes (last visited Sept. 28, 2017), *archived at* https://perma.cc/AZS4-ESKF.

Russia

Nerses Isajanyan
Foreign Law Consultant

SUMMARY Russia does not have laws that specifically deal with issues of undocumented minors. Illegal migrants under the age of sixteen are generally not subject to forced removal. However, they cannot acquire Russian citizenship, even if born in Russia. Amnesty programs in 2017 were targeted at adult migrant workers specifically from Moldova and Tajikistan.

I. Background Information

The number of illegal immigrants in Russia is estimated to be between eight and ten million people, which is about 7% of Russia's total population.[1] The majority of them come from Central Asian and other former Soviet countries whose nationals enjoy a visa-free regime with Russia.[2] Officials note that the Ukrainian crisis alone caused the inflow of around 1.1 million people to Russia in 2014–2015.[3] Because of budgetary constraints, in 2016 Russia was able to deport only 1,650 foreigners out of 4,428 detained for removal.[4]

II. Undocumented Children

Russia has not enacted legislation specifically targeting undocumented children. Because children under sixteen are not subject to administrative responsibility they cannot be forcibly deported and are allowed to stay in Russia with relatives; if there are no such relatives, they are placed in social institutions.[5] The government does not assign funds for the removal of children under sixteen and such removal can be arranged only at the expense of the child's family.[6]

Undocumented children have limited access to education, health care, and social assistance.[7] Only emergency medical treatment must be provided to foreigners free of charge and without

---

[1] Vladimir Vaschenko, *Russia Recounted Migrants*, GAZETA.RU (May 17, 2017), https://www.gazeta.ru/social/2017/05/17/10677761.shtml (in Russian), *archived at* https://perma.cc/3SAL-HDEU.

[2] Vitaliy Petrov, *The Difficulties of Expulsion: Vladimir Kolokoltsev Spoke about the Fight against Illegal Immigrants*, ROSSIISKAIA GAZETA (Dec. 14, 2016), https://rg.ru/2016/12/14/glava-mvd-soobshchil-o-nehvatke-deneg-na-vydvorenie-migrantov-iz-rossii.html (in Russian), *archived at* https://perma.cc/PJE7-9BZP.

[3] *Id.*

[4] *Id.*

[5] COMMISSIONER FOR CHILDREN'S RIGHTS IN ST. PETERSBURG, ANNUAL REPORT FOR 2016, § 2.3, *available at* http://www.spbdeti.org/files/razdel_2.3..pdf (in Russian), *archived at* https://perma.cc/A3MA-FDUD.

[6] *Id.*

[7] Nigora Bukhari-zade, *Does Russia Need Children of Migrants?*, FERGANA (Apr. 5, 2012), http://www.fergananews.com/articles/7330 (in Russian), *archived at* https://perma.cc/9QK3-KREY.

delay.[8] Human rights lawyers claim that Russia is obliged by virtue of international instruments to ensure the right to education and medical treatment for all children, irrespective of their status. However, by law only children with legal status can be enrolled in schools.[9] Educational institutions generally admit children who are in Russia on temporary visas. Such visas usually expire within ninety days, and schools tend to allow children to attend classes at least until the end of the school year.[10] Reportedly, immigration authorities periodically inspect educational institutions to detect illegal immigrants, and certain schools have been fined for keeping undocumented children.[11]

III. Citizenship

Russia follows the *jus sanguinis* principle. Therefore, the mere fact of being born in Russia does not grant citizenship to a child. There are exceptions, however, for children born in Russia to unknown parents[12] or to parents who cannot pass their citizenship to the child.[13]

Acquisition of Russian citizenship is possible for adult applicants who meet the requirements for naturalization.[14] Children (i.e., sons and daughters below the age of eighteen) of naturalized citizens generally acquire citizenship together with their parents.[15] Having a lawful status (normally a permanent resident permit) in Russia is a precondition for applying for citizenship.[16] Therefore, it is not possible for illegal immigrants or their children to apply for citizenship unless they legalize their status. Acquisition of citizenship is possible for children adopted by Russian citizens,[17] those who have Russian foster parents, and those placed in social institutions in Russia.[18]

---

[8] Government Resolution No. 186 on Provision of Medical Assistance to Foreign Nationals on the Territory of the Russian Federation, March 6, 2013, SOBRANIE ZAKONODATELSTVA ROSSIISKOI FEDERATSII I [OFFICIAL GAZETTE OF THE RUSSIAN FEDERATION] No. 10/2013, Item 1035, http://pravo.gov.ru/proxy/ips/?docbody=&nd=102163637&rdk=&backlink=1 (in Russian), *archived at* https://perma.cc/V4JM-UUNU.

[9] COMMISSIONER FOR CHILDREN'S RIGHTS IN ST. PETERSBURG, *supra* note 5.

[10] *Id.*

[11] Nigora Bukhari-zade, *supra* note 7.

[12] Federalnyi Zakon o Grazhdanstve [Federal Law on Citizenship], No. 62-FZ of May 31, 2002, art. 12, SOBRANIE ZAKONODATELSTVA ROSSIISKOI FEDERATSII I [SZRF] [OFFICIAL GAZETTE OF THE RUSSIAN FEDERATION] No. 22/2002, Item 2031, http://pravo.gov.ru/proxy/ips/?docbody=&nd=102076357, *archived at* https://perma.cc/3B2U-TWW8, English translation *available at* http://www.refworld.org/pdfid/50768e422.pdf, *archived at* https://perma.cc/23L7-EP6G.

[13] *Id.*

[14] *Id.* arts. 13, 14.

[15] *Id.* arts. 24, 25.

[16] *Id.* art. 13.

[17] *Id.* art. 26.

[18] *Id.* art. 27.

IV. Amnesty Programs

In 2016, officials announced the possibility of an amnesty program that could extend to three million illegal immigrants.[19] During 2017 Russia implemented two amnesty programs for illegal immigrants from two specific countries: Moldova and Tajikistan. These programs came into existence after negotiations at the level of heads of state. The programs were announced in the mass media but their legal basis is not clear; regulations reportedly have been circulated internally within the Russian Ministry of Internal Affairs and have not been made public.[20]

The Moldavan program was announced in January 2017 following a meeting between President Igor Dodon of Moldova and President Vladimir Putin of the Russian Federation. Moldovan citizens with illegal status in Russia had twenty days to appear before the immigration authorities, register, and then obtain a work permit within the next thirty days, or to leave the country within ninety days. The program allowed Moldovan citizens to legalize their status in Russia and obtain legal employment, but did not provide a path to Russian citizenship. Subsequently this period was extended to May 12, 2017, as only 10,000 Moldovans of the expected 250,000 were able to take advantage of the program.[21] About 17,500 "blacklisted" Moldovans who had left Russia and whose entry into the country had been barred because of prior overstays were also eligible to participate in the program. However, criminal offenders, those who had been deported from Russia or whose deportation hearings were pending, and those who re-entered the territory of Russia despite the travel ban were excluded from the program.[22]

A similar program was implemented from March 25 to April 24 of 2017 for citizens of Tajikistan following a meeting between Russian and Tajik presidents in February of 2017. It covered 70,000 Tajik citizens illegally residing in Russia.[23] About 106,000 Tajik nationals were allowed to come back to Russia while 5,000 were permanently barred from entering Russia because of diseases such as AIDS, tuberculosis, hepatitis, etc.[24]

---

[19] Vladimir Vaschenko, *Illegals in the Law*, GAZETA.RU (Oct. 17, 2016), https://www.gazeta.ru/social/2016/10/17/10255073.shtml (in Russian), *archived at* https://perma.cc/U6C2-V2WT.

[20] *Amnesty of Migrants from Tajikistan in Russia: Who Is Concerned and What to Do*, RIA (Apr. 17, 2017), https://ria.ru/sn_migrants/20170417/1492405448.html (in Russian), *archived at* https://perma.cc/6TSP-C5AB .

[21] *Dodon: Russia Has Extended the Amnesty Period for Moldovan Citizens*, SPUTNIK.MD (Mar. 24, 2017), https://ru.sputnik.md/politics/20170324/11815164/dodon-rossiya-prodlila-period-amnistii-dlya-grazhdan-moldovy.html (in Russian), *archived at* https://perma.cc/HYT3-GLAW.

[22] *Amnesty for Moldovan Migrant Workers in Russia: Not All Will Be Able to Legalize*, REGNUM (Mar. 9, 2017), https://regnum.ru/news/2247149.html (in Russian), *archived at* https://perma.cc/EU9T-47NQ.

[23] Liubov Kuliabko & Ekaterina Gabel, *Amnesty Announced to Migrant Offenders from Tajikistan*, MK.RU (Mar. 24, 2017), http://www.mk.ru/social/2017/03/24/migrantamnarushitelyam-iz-tadzhikistana-obyavili-amnistiyu.html (in Russian), *archived at* https://perma.cc/4YLV-E27G.

[24] *106,000 Tajik Migrants Will Be Able to Return to Russia Again*, REGNUM (June 13, 2017), https://regnum.ru/news/polit/2287397.html (in Russian), *archived at* https://perma.cc/NZN2-UWTS.

Saudi Arabia

George Sadek
Senior Legal Research Analyst

SUMMARY Foreigners and their children who violate Saudi Arabia's Residency Law by staying in the country illegally do not have a legal path to obtain a permanent residence permit or citizenship. Children of foreigners who reside illegally in the Kingdom as well as their parents must be detained and deported from Saudi Arabia for violating the Residency Law. Saudi Arabia is neither a party to the 1951 Convention Relating to the Status of Refugees, its 1967 Protocol, nor other international conventions protecting stateless persons.

I. Permanent Residency

Foreigners and their children who violate the Residency Law by staying in Saudi Arabia illegally do not have a legal path to obtain permanent residence permits. The Residency Law[1] in Saudi Arabia provides only a temporary residency permit for the purpose of working in Saudi Arabia. Such a residency permit is renewable annually,[2] and includes the permit-holder's spouse and minor children (under eighteen years of age).[3] Children who are eighteen and older are required to obtain an independent residency permit.[4]

II. Citizenship Requirements

The children of foreigners residing in the Kingdom of Saudi Arabia illegally have no right to apply for Saudi nationality. These children do not meet the requirements created by the Saudi Citizenship Law of 1954 and its 1985 amendments.[5] Article 9 of the Citizenship Law requires that a foreigner may only apply for Saudi citizenship if he/she

- has reached the age of majority at the time of submitting the application;
- has been a legal resident of the Kingdom for ten consecutive years;
- is of sound mind;
- has a record of good conduct (i.e., was never convicted of a criminal offense or imprisoned for more than six months for committing a crime against public morals);

---

[1] Residency Law, Law No. 17-2/25/1337, *as amended*, issued 4 May 1952, http://www.gdp.gov.sa/sites/pgd/ar-SA/TravelDocuments/IqamSystem/Pages/default.aspx (in Arabic), *archived at* https://perma.cc/QJ8G-QBJJ.

[2] *Id*. art. 37.

[3] *Id*. art. 41.

[4] *Id*. art. 42.

[5] Law of Citizenship of 1954, issued 23 September 1954, http://www.mofa.gov.sa/aboutKingDom/SaudiGovernment/RegimesInKingdom/CivilStatusSystem/Documents/87757_2جنسية.pdf (in Arabic), *archived at* https://perma.cc/6J2X-JRRS.

- works legally in a profession needed by the country; and
- has a good command of the Arabic language, including speaking, reading, and writing.

Additionally, the applicant must submit with his/her application a Saudi residency permit and his/her passport.[6]

III. Deportation of Violators

The children of foreigners who reside in the Kingdom illegally as well as their parents must be detained and deported from Saudi Arabia for violating the Residency Law. The Law authorizes the deportation of a foreigner whose visa has expired and whose residency permit has not been granted for any reason. It states that each foreigner who holds an expired visa issued by consular or diplomatic authorities of His Majesty's Government abroad and who does not meet the required conditions for being granted a residency permit must leave the country voluntarily within a period not to exceed one week. If the individual fails or refuses to leave, the Public Security Department must deport the individual at his or her own expense.[7] Likewise, the Law states that a foreigner who loses his/her work permit may be detained and must leave the Kingdom within one week.[8] Finally, any foreigner who enters Saudi Arabia illegally must be imprisoned until he/she is deported from the country.[9]

IV. Legal Status of Refugees

Saudi Arabia is neither a party to the 1951 Convention Relating to the Status of Refugees, its 1967 Protocol, the 1954 Convention Relating to the Status of Stateless Persons, nor the 1961 Convention on the Reduction of Statelessness. The Kingdom of Saudi Arabia does not have a domestic law governing asylum or refugees.

[6] *Id*. art. 9.

[7] Residency Law art. 27.

[8] *Id*. art. 11, para. 2.

[9] *Id*. art. 50.

South Africa

Hanibal Goitom
Foreign Law Specialist

SUMMARY Under South African law, it appears that children of illegal foreigners are not entitled to permanent residency or citizenship. South Africa has programs permitting qualifying illegal foreigners from Zimbabwe and Lesotho to temporarily adjust their status so that they can work, conduct business, or study in South Africa for the duration of the programs. However, these programs do not entitle the participants to adjust their status to permanent residency or citizenship.

I. Introduction

South Africa's immigration system is controlled by the Immigration Act[1] and its subsidiary legislation, the Immigration Regulations.[2] An alien who is not a permanent resident in South Africa may be admitted to the country only if he or she is issued a valid visa.[3] South Africa has various classes of visa.[4]

The acquisition of South African citizenship is governed by the 1995 Citizenship Act[5] and its subsidiary legislation, the Citizenship Regulations.[6] The Department of Home Affairs administers the Citizenship Act and the Minister of the Department has wide discretionary powers on an array of issues, including with regard to the granting of citizenship to a foreigner; however, all his decisions are subject to judicial oversight.[7]

---

[1] Immigration Act No. 13 of 2002, 15 BUTTERWORTHS STATUTES OF THE REPUBLIC OF SOUTH AFRICA [BSRSA] (rev. through 2016), available on the University of Pretoria website, *at* http://www.lawsofsouthafrica.up.ac.za/index.php/browse/citizens-and-foreigners/immigration-act-13-of-2002/act/13-of-2002-immigration-act-9-aug-2015-to-date-pdf/download, *archived at* https://perma.cc/65GU-AGKH.

[2] Immigration Regulations 2014, No. R. 413 GOVERNMENT GAZETTE [GG], No. 37679 (May 26, 2014), *available at* http://www.lawsofsouthafrica.up.ac.za/index.php/browse/citizens-and-foreigners/immigration-act-13-of-2002/regulations-and-notices/13-of-2002-immigration-act-regs-gnr-413-26-may-2014-to-date-pdf/download, *archived at* https://perma.cc/8DS3-AE5G.

[3] Immigration Act § 9.

[4] *Id.* §§ 11–24; Immigration Regulations §§ 11–22.

[5] South African Citizenship Act No. 88 of 1995, 3 BSRSA (rev. through 2011), *available at* http://www.lawsofsouthafrica.up.ac.za/index.php/browse/citizens-and-foreigners/south-african-citizenship-act-88-of-1995/act/88-of-1995-south-african-citizenship-act-1-jan-2013-to-date-pdf/download, *archived at* https://perma.cc/D59S-B37L.

[6] Regulations on the South African Citizenship Act, 1995 (Citizenship Regulations), No. 1122, GN, No. 36054 (Dec. 28, 2012) *available at* http://www.lawsofsouthafrica.up.ac.za/index.php/browse/Citizens and Foreigners/South African Citizenship Act 88 of 1995/Regulations and Notices/88-of-1995-south-african-citizenship-act-regs-gnr-1122-1-jan-2013-to-date-pdf/download, *archived at* https://perma.cc/Y2R7-PQFP.

[7] Citizenship Act §§ 1, 22, & 23; F. Venter, *Citizenship and Nationality*, *in* 2(2) THE LAW OF SOUTH AFRICA 127, 133 (W.A. Joubert et al. eds., 2003).

II. Illegal Foreigners

An "illegal foreigner" is a foreigner who is in South Africa in violation of the Immigration Act, meaning a person "without documentation to prove legal status."[8] This does not include the holders of an expired asylum transit visa. While the Immigration Act states that a holder of an asylum transit visa becomes an illegal foreigner if his/her visa expires before he/she can report to a Refugee Reception Office, a 2012 Supreme Court of Appeal decision found that "the lapse of an asylum transit visa by itself does not render an asylum seeker an illegal immigrant."[9] The Court has also held that "undocumented asylum seekers not in possession of asylum transit visas cannot be summarily considered 'illegal foreigners' "[10]

III. Permanent Residency Requirements

Children of illegal foreigners are not entitled to permanent residency. Under South African law, residency may be established through one of two possible means: direct residency or residency on other grounds. A child is eligible to acquire direct residency if he/she is under twenty-one years of age and the child of a citizen or a permanent resident.[11] In this case the permit would expire upon the child reaching the age of twenty-one and failing to apply for confirmation.[12] A child may also acquire direct residency if he/she is the child of a citizen.[13] In addition, a child may be able to establish residency if he/she is the relative of a citizen or permanent resident within the first degree of kinship.[14] The source of entitlement to acquire permanent residency in all these circumstances is a relationship to a person whose presence in South Africa is legal.

IV. Citizenship Requirements

Acquisition of citizenship also requires a connection to a documented person.[15] A person born in or outside of South Africa is a citizen by birth if at least one of his parents is a South African

---

[8] Immigration Act § 1; Corey Johnson & Sergio Carcitto, *The State of the Asylum System in South Africa*, *in* STATES, THE LAW AND ACCESS TO REFUGEE PROTECTION 167, 172 (2014).

[9] Johnson & Carcitto, *supra* note 8, at 172.

[10] *Id*. at 173.

[11] Immigration Act § 26.

[12] *Id*.

[13] *Id*.

[14] *Id*. § 27. Persons considered within the first step of kinship are parents, children, and spouses. *Permanent Residence in South Africa*, SOUTH AFRICA EMBASSY IN WASHINGTON, D.C., http://www.southafrica-newyork.net/homeaffairs/immigration.htm (last visited Sept. 28, 2017), *archived at* https://perma.cc/LAA8-AJZ5.

[15] Press Release, Department of Home Affairs, Media Statement on How Citizenship is Acquired and Children Registered in South Africa (Apr. 11, 2017), http://www.home-affairs.gov.za/index.php/statements-speeches/958-media-statement-on-how-citizenship-is-acquired-and-children-registered-in-south-africa, *archived at* https://perma.cc/L6G8-AAE3; Marissa Rogers & Uvi Chanderparsath, South Africa: Dispensation of Zimbabweans Project and the Introduction of the New Zimbabwe Special Permit (Oct. 2014), http://www.ey.com/Publication/vwLUAssets/South_Africa_int roduces_new_Zimbabwean_Special_Dispensation/$FILE/October 22 South Africa - Dispensation of Zimbabweans Project and the introduction of the new Zimbabwean Special Dispensation Permit.pdf, *archived at* https://perma.cc/ABB8-RC86.

citizen.[16] Anyone born in South Africa to non-South African citizens is a citizen by birth if he/she does not already have or qualify for citizenship of a foreign country and his/her birth has been duly registered in South Africa in accordance with the applicable law.[17] In addition, anyone born in South Africa to parents who have been granted permanent residency permits qualifies for citizenship by birth if he/she has lived in the country from the time of birth to the time of attaining the age of majority, and his/her birth has been duly registered in accordance with the applicable law.[18] It appears that the birth of a child of an illegal foreigner cannot be registered.[19]

V. Special Dispensations

In 2009, South Africa introduced a special dispensation for citizens of Zimbabwe living in South Africa illegally. Known as the Dispensation of Zimbabwe Project (DZP), this program temporarily regularized the immigration status of Zimbabweans who met certain requirements.[20] The program permitted Zimbabweans who had a valid Zimbabwean passport, proof of employment/business/accredited study, and no criminal record to apply for temporary status so that they could work, conduct their business, or study in South Africa.[21] The program, which allowed for around 250,000 Zimbabwean nationals to temporarily adjust their status, expired in December 2014 and was subsequently renewed.[22] Once the current program expires in December 2017, it will be replaced by one that will run through 2021.[23] Significantly, this program accords temporary legal status to qualifying applicants and does not "entitle the holder the right to apply for permanent residence irrespective of the period of stay in the Republic of South Africa."[24]

In October 2015, South Africa introduced a similar program, Lesotho Special Permit (LSP), for citizens of Lesotho illegally living in South Africa.[25] Like the Zimbabwe program, while special

---

[16] *Id*. § 2.

[17] *Id*.

[18] *Id*.

[19] Press Release, Department of Home Affairs, *supra* note 15.

[20] *New Zimbabwe Dispensation Permit Announced*, INTERGATE IMMIGRATION, http://www.intergate-immigration.com/blog/new-zimbabwean-special-dispensation-permit-announced/ (last visited Sept. 18, 2017), *archived at* https://perma.cc/K9CF-JQUS.

[21] *Id*.

[22] Press Statement, Department of Home Affairs, Home Affairs Clarifies Status of Special Permits for Zimbabweans (May 20, 2014), http://www.home-affairs.gov.za/index.php/statements-speeches/463-home-affairs-clarifies-status-of-special-permits-for-zimbabweans, *archived at* https://perma.cc/CD2G-FBXJ.

[23] Statement by Minister Mkhize on the Closure of the Zimbabwean Special Permit (ZSP) and the Opening of the New Zimbabwean Permit (ZEP) (Sept. 8, 2017), http://www.dha.gov.za/index.php/statements-speeches/1034-statement-by-minister-mkhize-on-the-closure-of-the-zimbabwean-special-permit-zsp-and-the-opening-of-the-new-zimbabwean-exemption-permit-zep, *archived at* https://perma.cc/V2T6-D5C7.

[24] *Id*.

[25] Statement by Home Affairs Minister Malusi Gigaba at the Media Briefing on the Closing of the Zimbabwe Special Permit Programme and the Opening of the Lesotho Special Permit (Nov. 25, 2015), http://www.home-affairs.gov.za/index.php/statements-speeches/704-statement-by-home-affairs-minister-malusi-gigaba-at-the-media-

dispensation entitles the holder to work, do business, or study for the duration of the program, it does not entitle him/her to apply for and obtain permanent residency.[26] The program will expire in December 2019.[27]

---

briefing-on-the-closing-of-the-zimbabwe-special-permit-programme-and-the-opening-of-the-lesotho-special-permit, *archived at* https://perma.cc/3KEC-E63N.

[26] *Id*.

[27] Press Release, Department of Home Affairs, Media Statement on Minister Gigaba's Visit to the Lesotho Special Permit Centre (May 10, 2016), http://www.home-affairs.gov.za/index.php/statements-speeches/782-media-statement-on-minister-gigaba-s-visit-to-the-lesotho-special-permit-centre, *archived at* https://perma.cc/8T84-DRR5.

Sweden

Elin Hofverberg
Foreign Law Research Consultant

SUMMARY Sweden has no special path to permanent residency or citizenship for undocumented minors, and children born to undocumented parents do not receive Swedish citizenship at birth. Sweden has not granted general amnesty for persons who have been undocumented over a long period. The right to legal residence based on humanitarian grounds allows for the consideration of time spent in Sweden and is more generous towards children than adults. The right to residence is determined on an individual basis, where prior status as an undocumented person is not considered a hindrance. Undocumented persons in Sweden are typically persons who have had their asylum application denied. Many of the undocumented individuals in Sweden are minors. Asylum applications can be resubmitted after a four-year statute of limitation on the most recent decision has run. Undocumented minors have the same right to public education, health care, and dental care as children who are citizens. Undocumented adults also have a limited right to financial and health benefits, covering only acute/urgent circumstances.

I. Introduction/Background

Sweden is a member of the European Union (EU) and as such is bound by EU law. Specifically in relation to immigration law, Sweden is bound by the free movement of people (EU citizens), Schengen, and the Dublin Regulation.[1]

During the Refugee Crisis of 2015, 162,900 asylum seekers (equal to approximately 1.7% of the population) sought refuge in Sweden.[2] This made Sweden the second-largest EU recipient of asylum applications per capita in 2015.[3] Nearly half of these immigrants came during October and November of 2015.[4] In total 70,384 minors sought asylum in 2015.[5] A little more than half

[1] *Schengen Area*, EUROPEAN COMMISSION (Sept. 15, 2017), https://ec.europa.eu/home-affairs/what-we-do/policies/borders-and-visas/schengen_en, *archived at* https://perma.cc/82E3-477F; *Common European Asylum System*, EUROPEAN COMMISSION (Sept. 15, 2017), https://ec.europa.eu/home-affairs/what-we-do/policies/asylum_en, *archived at* https://perma.cc/HN4S-JSR8.

[2] STATISTISKA CENTRALBYRÅN [STATISTICS SWEDEN], http://www.scb.se/sv_/Hitta-statistik/Artiklar/Syrier-vanligast-bland-asylsokande-under-2015/, *archived at* https://perma.cc/P3CB-5NBR.

[3] Sweden received 1,667 applications per 100,000 inhabitants compared to the EU average of 260 per 100,000 inhabitants. Only Hungary received more applications per capita. *Migrant Crisis: Migration to Europe Explained in Seven Charts*, BBC (Mar. 4, 2016), http://www.bbc.com/news/world-europe-34131911, *archived at* https://perma.cc/874G-HC5W.

[4] STATISTISKA CENTRALBYRÅN, *supra* note 2. More than 35,000 persons came in each of these months.

[5] *Asylsökande till Sverige under 2000–2016*, MIGRATIONSVERKET, https://www.migrationsverket.se/download/18.585fa5be158ee6bf362fd2/1485556063045/Asyls%C3%B6kande+till+Sverige+2000-2016.pdf (last visited Sept. 19, 2017), *archived at* https://perma.cc/K3NS-NQ3T.

of the minors (35,400) were unaccompanied minors, mostly boys in their late teens from Afghanistan.[6]

As a response to the refugee crisis the Swedish parliament and government made several changes to the Swedish immigration law in 2015 and 2016, most notably changing and limiting policies on who receives permanent resident status,[7] as well as how humanitarian reasons are determined.[8] In addition, in December of 2015 Sweden set up border controls, both external and internal.[9] Internal border controls are still in effect in a number of Swedish ports and cities; the large identification control program on the border to Denmark has ceased.[10]

Two incidents have been reported related to undocumented immigrants. On April 7, 2017, a terrorist attack was carried out in the Swedish capital Stockholm by a person who had been refused asylum and who had a legal obligation to leave Sweden voluntarily but instead had chosen to stay and live as an undocumented immigrant.[11] In 2015 an asylum-seeker who had just found out that he had been denied asylum killed two people in an unprovoked attack at an IKEA store; the case was not considered a terrorist attack but deemed directly linked to his rejected asylum application.[12]

---

[6] *Id*.

[7] LAG OM TILLFÄLLIGA BEGRÄNSNINGAR AV MÖJLIGHETEN ATT FÅ UPPEHÅLLSTILLSTÅND I SVERIGE [ACT ON TEMPORARY RESTRICTION ON THE POSSIBILITY OF OBTAINING RESIDENCE PERMITS IN SWEDEN] (SFS 2016:752), http://www.notisum.se/rnp/ sls/lag/20160752.htm, *archived at* https://perma.cc/W6CJ-58JF; *see also* Elin Hofverberg, *Sweden: Government Moves to Adopt More Restrictive Rules for Asylum Seekers*, Global Legal Monitor (Nov. 30, 2015), http://www.loc.gov/law/foreign-news/article/sweden-government-moves-to-adopt-more-restrictive-rules-for-asylum-seekers/, *archived at* https://perma.cc/GXF6-MK2H.

[8] LAG OM TILLFÄLLIGA BEGRÄNSNINGAR AV MÖJLIGHETEN ATT FÅ UPPEHÅLLSTILLSTÅND I SVERIGE (SFS 2016:752), *supra* note 7; *see also* Hofverberg, *supra* note 7.

[9] Regeringen Pressrelease, Regeringen beslutar att tillfälligt återinföra gränskontroll vid inre gräns (Nov. 12, 2015), http://www.regeringen.se/artiklar/2015/11/regeringen-beslutar-att-tillfalligt-aterinfora-granskontroll-vid-inre-grans/, *archived at* https://perma.cc/9PQS-6UUR.

[10] *Frågor och svar om id-kontroller och gränskontroller*, REGERINGEN (May 15, 2017), http://www.regeringen.se/artiklar/2017/05/fragor-och-svar-om-id-kontroller-och-granskontroller/, *archived at* https://perma.cc/6SS4-J6AD.

[11] *Stockholm Attack: Who Is Suspect Rakhmat Akilov?*, BBC (Apr. 10, 2017), http://www.bbc.com/news/world-europe-39552691, *archived at* https://perma.cc/345M-S737; Press Release, Stockholms Tingsrätt [Stockholm District Court] (Apr. 11, 2017), http://www.stockholmstingsratt.se/Om-tingsratten/Nyheter-och-pressmeddelanden/One-person-detained-suspected-for-a-terrorist-offence-for-the-incident-in-central-Stockholm-on-Friday/, *archived at* https://perma.cc/NWL7-A7RN. *See also* Press Release, Stockholms Tingsrätt (Aug. 31, 2017), http://www.stockholmstingsratt.se/Om-tingsratten/Nyheter-och-pressmeddelanden/Extended-time-for-the-prosecutor-to-bring-charges-in-the-case-of-suspected-terrorist-crime-in-Stockholm3/, *archived at* https://perma.cc/9LX7-6ZVH.

[12] Press Release, Svea Hovrätt [Svea Court of Appeals] (Dec. 22, 2015), http://www.svea.se/Om-Svea-hovratt/Nyheter-fran-Svea-hovratt/Svea-hovratt-faststaller-livstidsdomen-for-morden-pa-IKEA/, *archived at* https://perma.cc/NC59-MRXA (judgement on file with author)..

II. Swedish Citizenship

Swedish citizenship is acquired through birth or through naturalization.[13] Children born after 2015 to either a Swedish mother or father (regardless of their marital status), in Sweden or abroad, acquire Swedish citizenship at birth.[14] In addition, persons may acquire citizenship through application or naturalization.[15] To acquire citizenship through naturalization a person must have resided permanently in Sweden for a minimum of two years (Nordic citizens), four years (stateless persons or refugees), or five years (everyone else).[16] A child who at birth has permanent residency (i.e., is a child of a person who has permanent residency) and who would otherwise become stateless acquires Swedish citizenship at birth.[17]

III. Illegal Immigration

A. General Considerations

Persons who are present in Sweden without the proper documentation (residence permits, visas, or citizenship) are referred to as "undocumented persons." Undocumented persons in Sweden are typically individuals who entered Sweden to seek asylum and then remained in Sweden after being denied permanent or temporary residence as refugees or under subsidiary protection.[18]

Previously, a person who had been denied asylum could reapply for asylum after the person had left and then re-entered the country. In 2005 the Swedish Parliament adopted a statute of limitations (*preskriptionstid*) on asylum decisions, mandating that a person could not reapply as an asylum seeker unless four years had passed since the person last applied for asylum.[19] Ahead of the 2018 national elections in Sweden, the Moderate Party (the largest opposition party) has said that they want to extend the statute of limitations to eight years.[20]

---

[13] LAG OM SVENSKT MEDBORGARSKAP [ACT ON SWEDISH CITIZENSHIP] (SFS 2001:82), http://www.notisum.se/rnp/sls/lag/20010082.HTM, *archived at* https://perma.cc/CSH8-2MVN.

[14] *Id*. 2 §.

[15] *Id*. 11§.

[16] *Id*.

[17] *Id*. 6 §.

[18] Examples of undocumented persons and their stories are available at *Röster från skuggsamhället - att leva som papperslös i Sverige*, RÖDAKORSET [RED CROSS] (Apr. 17, 2015), http://www.redcross.se/press-och-opinion/rapporter/roster-fran-skuggsamhallet---att-leva-som-papperslos-i-sverige/, *archived at* https://perma.cc/S6B4-V5Q8. "Subsidiary protections" are protections based on the person being subject to corporal punishment, torture, or the death sentence if returned to his or her home country. *See Asylum Regulations*, MIGRATIONSVERKET (May 29, 2017), https://www.migrationsverket.se/English/Private-individuals/Protection-and-asylum-in-Sweden/Applying-for-asylum/Asylum-regulations.html, *archived at* https://perma.cc/D6MS-DGME.

[19] 12 kap. 22 § UTLÄNNINGSLAG [UTL] [ALIENS ACT] (SFS 2005:716), http://www.notisum.se/rnp/sls/lag/20050716.htm, *archived at* https://perma.cc/32XW-Y8BZ; Prop. 2004/05:170, https://data.riksdagen.se/fil/2D693F72-D485-41F5-AF85-11DADFBFCA2C, *archived at* https://perma.cc/9QNF-UD5V.

[20] *Moderaternas nya utspel om papperslösa i Sverige* [*The Moderates' New Gambit on Undocumented Persons in Sweden*], EXPRESSEN (Apr. 23, 2017), http://www.expressen.se/kvallsposten/moderaternas-nya-utspel-om-papperslosa-i-sverige/, *archived at* https://perma.cc/M54D-E4ZN.

There are currently 12,500 persons who have been denied asylum who are listed with the police because they are evading deportation.[21] The number of persons who have been denied asylum that are listed with the police is comparatively small in relation to the total number of denied applicants; 15,401 persons had their asylum applications denied during the month of July of 2017 alone.[22] According to news reports, an estimated 8,000 undocumented persons are registered as taxpayers with the Swedish Tax Authority.[23] Reports from Swedish media and the Swedish police indicate that as a result of the 2015 shift in policy, whereby fewer persons are granted residence permits, more asylum seekers are staying as undocumented in Sweden, waiting for the four year statute of limitations to run.[24] Swedish state media (*Sveriges Radio*) reports that a smaller percentage of persons reapplying for asylum are having their original denials overturned.[25] In 2011, 61% of those who reapplied were successful, that number had fallen to 5% by the first six months of 2017.[26] According to news reports, the Swedish Police are worried that the number of undocumented persons living in Sweden will rise.[27] During recent parliamentary debates it was predicted that some 80,000 persons live as undocumented immigrants in Sweden and that the number will rise.[28]

---

[21] *Frågor och svar om verkställighet*, POLISEN (Mar. 7, 2017), https://polisen.se/Om-polisen/Specialkompetenser/Granspolisen/Fragor-och-svar-om-verkstallighet/, *archived at* https://perma.cc/L6AH-PD3C.

[22] Avgjorda asylärenden beslutade av Migrationsverket, förstagångsansökningar 2017 [Decided Asylum Cases, First-Time Applications, 2017], MIGRATIONSVERKET (Sept. 8, 2017), https://www.migrationsverket.se/download/18.4100dc0b159d67dc6146d1/1505293104409/Avgjorda+asyl%C3%A4renden+2017+-+Asylum+decisions+2017.pdf, archived at https://perma.cc/Q3PT-2RH8.

[23] *Tusentals papperslösa arbetar vitt – utan tillstånd* [*Thousands of Undocumented Persons Pay Taxes – Without a Work Permit*], SVD (July 11, 2017), https://www.svd.se/sommar-papperslos-1-tusentals-papperslosa-arbetar-vitt--utan-tillstand.

[24] *De förbereder ett liv som papperslösa* [*They Prepare a Life as Undocumented*], SVERIGES RADIO (May 10, 2017), http://sverigesradio.se/sida/artikel.aspx?programid=86&artikel=6692109, *archived at* https://perma.cc/C5XD-CAJC; Arne Larsson, *Så många fler kan bli papperslösa i Sverige* [*This Many More May Become Undocumented in Sweden*], GP (July 3, 2017), http://www.gp.se/nyheter/sverige/s%C3%A5-m%C3%A5nga-fler-kan-bli-pappersl%C3%B6sa-i-sverige-1.4407850, *archived at* https://perma.cc/K5NB-4PC3.

[25] *Mindre vanligt att de som fått avslag får asyl på andra försöket* [*Less Common that Persons Whose Applications are Denied Get Asylum on Second Try*], SVERIGES RADIO (July 15, 2017), http://sverigesradio.se/sida/gruppsida.aspx?programid=83&grupp=23921&artikel=6736226, archived at https://perma.cc/EML8-M4GQ.

[26] *Id*.

[27] *Polisen oroad över fler papperslösa*, SVERIGES RADIO (Mar. 7, 2017), http://sverigesradio.se/sida/artikel.aspx?programid=83&artikel=6647005, *archived at* https://perma.cc/N4AT-UAQJ.

[28] Sveriges Riksdag, Aktuell debatt om situationen för ensamkommande, Sept. 13, 2017, http://www.riksdagen.se/sv/webb-tv/video/aktuell-debatt/aktuell-debatt-om-situationen-for-ensamkommande_H5C120170913ad, *archived at* https://perma.cc/KE9J-D4G6.

B. Rights of Undocumented Persons

1. Education

As of 2013 undocumented minors have the same right to a free public primary and secondary education as Swedish citizens.[29] This means that children ages six to eighteen have a legal right to attend school (elementary through high school).[30] However, unlike legal resident children, undocumented minors are not mandated to attend school.[31] Municipalities may seek state grants for the added cost of educating undocumented children.[32]

2. Health and Dental Care

Undocumented minors, whether born in Sweden or elsewhere, have the same right to health care and dental care as a native-born Swedish citizen child.[33]

Undocumented adults also have the right to health and dental care in Sweden, but only to urgent care (defined by law as "care that cannot wait"), prenatal care, abortion care, and birth control.[34] An estimated 30,000 undocumented persons received health care in Sweden in 2015.[35] This figure likely includes undocumented EU migrants (persons who are EU citizens but have no documentation of such citizenship and no legal right to remain in Sweden, as they are not working in Sweden).[36]

---

[29] 29 kap. 2 § SKOLLAGEN [SCHOOL ACT], *as amended through* SFS 2013:298 (SFS 2010:800), http://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/skollag-2010800_sfs-2010-800#K29, *archived at* https://perma.cc/G5VX-3NUM; REGERINGENS PROPOSITION [PROP.] 2012/13:58 UTBILDNING FÖR BARN SOM VISTAS I LANDET UTAN TILLSTÅND, http://www.regeringen.se/49b728/contentassets/e2030b7559b140ab8e59b85c5415346f/utbildning-for-barn-som-vistas-i-landet-utan-tillstand-prop.-20121358, *archived at* https://perma.cc/2BBC-U7TV. *See also Papperslösa barn i skolan*, SKOLVERKET, https://www.skolverket.se/regelverk/mer-om-skolans-ansvar/papperslosa-barn-1.205221, *archived at* https://perma.cc/CNK6-BZDP.

[30] *Id*.

[31] *Id*.

[32] *Statsbidrag för utbildning för barn som vistas i landet utan tillstånd* [*State Grants for Education of Children that are Present in the Country Without Permits*], SKOLVERKET, https://www.skolverket.se/skolutveckling/statsbidrag/grundskole-och-gymnasieutbildning/papperslosa-barn-1.203490 (last visited Sept. 19, 2017), archived at https://perma.cc/4UFV-USGR.

[33] 6 § LAG OM HÄLSO- OCH SJUKVÅRD TILL VISSA UTLÄNNINGAR SOM VISTAS I SVERIGE UTAN NÖDVÄNDIGA TILLSTÅND (SFS 2013:407), http://www.notisum.se/rnp/sls/lag/20130407.htm, *archived at* https://perma.cc/8DDQ-4U6X.

[34] 7 § LAG (2013:407) OM HÄLSO- OCH SJUKVÅRD TILL VISSA UTLÄNNINGAR SOM VISTAS I SVERIGE UTAN NÖDVÄNDIGA TILLSTÅND. For examples of health care provided and costs, see *Healthcare in Sweden for Asylum-Seekers, People with No Papers and People in Hiding*, 1177 VÅRDGUIDEN (Nov. 11, 2016), https://www.1177.se/Other-languages/Engelska/Regler-och-rattigheter/Vard-i-Sverige-om-man-ar-asylsokande-gomd-eller-papperslos/, *archived at* https://perma.cc/F7QT-5NYC.

[35] *30 000 "papperslösa" fick vård i Sverige – men regelverket är otydligt* [*30,000 Undocumented Received Health Care in Sweden – But the Legal Framework Is Unclear*], DAGENS JURIDIK (Apr. 30, 2016), http://www.dagensjuridik.se/2016/04/30-000-papperslosa-fick-vard-i-sverige-men-regelverket-ar-otydligt, archived at https://perma.cc/84H4-B6VA.

[36] *Id*.

3. *Social Benefits (Social Welfare Services) and Housing Benefits*

Undocumented persons living in Sweden only have a limited legal right to social welfare.[37] However, certain municipalities, such as Malmö, give undocumented minors full financial aid with reference to the legal obligation to consider "the best interest of the child."[38] Consequently, Malmö provides undocumented families with full financial support, including child benefits and housing benefits, in order for the child to enjoy a "decent living situation."[39] This means that minors receive between SEK 2,500 (approximately US$314) and 3,000 (approximately US$376) a month from the local authorities, whereas an adult receives SEK 1,700 (approximately US$213) per month in financial aid.

4. *Prior to 2015*

Prior to the refugee crisis of 2015 a person whose asylum application had been denied still had the right to social benefits including free room and board at special migration authority operated housing.[40] Following legal changes, there is no longer any such right in Sweden. However, as in the case with Malmö above, certain municipalities have chosen to provide these benefits, even though they are not mandated to do so.

IV. Pathways to Legal Residence and Citizenship for Illegal Immigrants

A. Children

Sweden does not have a special track for undocumented minors to attain permanent residency. Nevertheless, years spent in Sweden may be considered a factor in identifying *synnerligen ömmande omständigheter* (exceptionally distressing circumstances, historically referred to as "humanitarian grounds") when determining if someone should receive asylum.[41] For children

---

[37] LAGEN OM MOTTAGANDE AV ASYLSÖKANDE M.FL (SFS 1994:137) [ACT ON RECEIVING ASYLUMSEEKERS], https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-1994137-om-mottagande-av-asylsokande-mfl_sfs-1994-137, *archived at* https://perma.cc/SC57-H3PQ; 4 kap. 2 § SOCIALTJÄNSTLAGEN [SOL] [SOCIAL WELFARE ACT] (SFS 2001:453), http://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/ socialtjanstlag-2001453_sfs-2001-453, *archived at* https://perma.cc/QPS5-QQDD; *see also* Supreme Administrative Court Decision, HFD 2017:33, http://www.hogstaforvaltningsdomstolen.se/Domstolar/regeringsratten/Rättsfall/ HFD 2017 ref. 33.pdf, *archived at* https://perma.cc/TZ8S-TJZG (detailing that undocumented persons do not have a right to social welfare (*Socialbidrag*) in Sweden but may still have a right to financial aid under the Act on Receiving Asylum-seekers).

[38] MALMÖ STADSKONTOR, RIKTLINJER FÖR HANDLÄGGNING AV FÖRSÖRJNINGSSTÖD OCH EKONOMISKT BISTÅND FÖR LIVSFÖRING I ÖVRIGT, http://malmo.se/download/18.1d68919c1431f1e2a9636e7/1491303412408/Riktlinjer+för+handläggning+av+försörjningsstöd+och+ekonomiskt+bistånd_Malmö+stad.pdf, *archived at* https://perma.cc/VM5U-MAKS.

[39] *Id*. at 13. Accordingly, financial benefits are made with reference to the Social Welfare provisions 2 a kap 2 § SOCIALTJÄNSTLAGEN (SOL).

[40] *See* Supreme Administrative Court Decision HFD 2014:37, https://lagen.nu/dom/hfd/2014:37, *archived at* https://perma.cc/72M6-XEYA (establishing that a person had a right to social benefits even though he was not cooperating in his court-ordered deportation).

[41] 5 kap. 6 § 1 st. UTL.

the test is *särskilt ömmande omständigheter* (particularly distressing circumstances).[42] Other factors considered are the health of the child and the situation in the home country.[43] By a temporary provision in force between July 20, 2016, and July 19, 2019, the court's discretion to grant residence permits based on *synnerligen* or *särskilt ömmande omständigheter* has been limited.[44] During this period such permits may only be granted if not granting them would violate Sweden's international obligations.[45] Moreover, such permits may only be temporary and for an initial period of thirteen months.[46] Refugee group representatives want the case law to change, so that children over the age of two would be considered as having such a close relationship to Sweden as to warrant awarding them legal residency after one year.[47]

Being or having been undocumented in Sweden is not a bar to later receiving asylum or a residence permit based on work, school, or family.[48]

Undocumented minors and young adults that attend school may receive a temporary residence permit to complete school.[49] As of June 1, 2017, a minor who has attended high school while either an undocumented person or while his or her resident permit application was pending may apply for a temporary residence permit to finish high school.[50] Completion of a high school education is thought to help that person to receive an employment-based residency permit sponsorship.[51] Persons under the age of twenty-five cannot be granted a permanent residence permit in Sweden based on employment unless they have completed a high school education.[52] The amended Act thus provides persons aged seventeen to twenty-five a chance to obtain the

---

[42] 5 kap. 6 § 2 st UTL; *see also* Legislative History DS 2014:5 ömmande omständigheter, https://data.riksdagen.se/fil/33DFEE45-F34B-48E6-B7E6-465204B82B04, *archived at* https://perma.cc/2LB4-3AXJ.

[43] DS 2014:5 at 16-21.

[44] 5 kap. 6 § 3 st. UTL; 11 and 12 §§ LAGEN OM TILLFÄLLIGA BEGRÄNSNINGAR AV MÖJLIGHETEN ATT FÅ UPPEHÅLLSTILLSTÅND I SVERIGE (SFS 2016:752).

[45] 5 kap. 6 § 3 st. UTL.

[46] 12 § LAGEN OM TILLFÄLLIGA BEGRÄNSNINGAR AV MÖJLIGHETEN ATT FÅ UPPEHÅLLSTILLSTÅND I SVERIGE (SFS 2016:752).

[47] *Ömmande omständigheter*, FARR, http://www.farr.se/sv/vad-vill-farr/ommande-omstandigheter (last visited Sept. 15, 2017), *archived at* https://perma.cc/64MP-8Y6F.

[48] UTL, *e contrario*.

[49] LAG OM TILLFÄLLIGA BEGRÄNSNINGAR AV MÖJLIGHETEN ATT FÅ UPPEHÅLLSTILLSTÅND I SVERIGE [ACT ON TEMPORARY LIMITS ON THE OPPORTUNITY OF RECEIVING A RESIDENCY PERMIT IN SWEDEN] (SFS 2016:752), https://www.riksdagen.se/ sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-2016752-om-tillfalliga-begransningar-av_sfs-2016-752, *archived at* https://perma.cc/VL38-MZTH.

[50] *Id.*; *see also* Elin Hofverberg, *Sweden: Parliament Votes to Grant Migrants Extended Residence Permits to Complete High School*, GLOBAL LEGAL MONITOR (June 9, 2017), https://www.loc.gov/law/foreign-news/article/sweden-parliament-votes-to-grant-migrants-extended-residence-permits-to-complete-high-school/, *archived at* https://perma.cc/K46E-4L2E.

[51] Proposition [Prop.] 2016/17:133 on Amendments to the Temporary Act on Residence Permits Regarding High School Education at 1, REGERINGEN (Government Offices of Sweden website).

[52] 17 § 3 st. LAG OM TILLFÄLLIGA BEGRÄNSNINGAR AV MÖJLIGHETEN ATT FÅ UPPEHÅLLSTILLSTÅND I SVERIGE [ACT ON TEMPORARY LIMITS ON THE OPPORTUNITY OF RECEIVING A RESIDENCY PERMIT IN SWEDEN] (SFS 2016:752).

education needed to receive a permanent residence permit. A permanent residence permit can be given to a person who holds a job and can provide for him or herself.[53]

B. Adults

Sweden has not offered universal amnesty for undocumented persons staying in Sweden. Similar to the test of *särskilt ömmande omständigheter* for children, adults may be granted residency permits based on *synnerligen ömmande omständigheter*.[54] Typically, physical presence in Sweden for a long period of time is not by itself enough to grant an adult without children legal residence in Sweden.[55]

Adults who have been residing in the country illegally are not barred from later becoming legal residents or citizens.[56] To become a permanent resident an undocumented individual must be granted a permanent resident permit based on asylum, employment, or family grounds.[57] Thereafter the person must remain a permanent resident of Sweden for four years (refugees) or five years (everyone else) in order to become a Swedish citizen.[58]

Case law examples of when permanent residence has been awarded to adults who have lived in Sweden illegally include MIG 2011:27[59] and MIG 2009:2.[60]

---

[53] *Id*. 17 § 2 st.

[54] 5 kap. 6 § 1 st UTL. For more on temporary limitations on applying this provision see Part III(A), above.

[55] MIG 2007:15 (Supreme Migration Court), https://lagen.nu/dom/mig/2007:15, *archived at* https://perma.cc/WDB4-9QJH.

[56] UTL, *e contrario*.

[57] 3. kap; 4 kap.; 5 kap. UTL.

[58] 11§ LAG OM SVENSKT MEDBORGARSKAP (SFS 2001:82).

[59] Supreme Migration Court, MIG 2011:27, https://lagen.nu/dom/mig/2011:27, *archived at* https://perma.cc/2B46-LM8X.

[60] Supreme Migration Court, MIG 2009:2, https://lagen.nu/dom/mig/2009:2, *archived at* https://perma.cc/DDP3-TAK2.

Turkey

Wendy Zeldin
Senior Legal Research Analyst

SUMMARY Turkey does not appear to have a program for undocumented child migrants similar to the US DACA program. However, there are certain conditions under the country's laws on citizenship and international protection that allow for citizenship or residency based on the particular status or best interest of a child. While the government periodically threatens deportation of "irregular" migrants, such as undocumented Armenians, in general it seems to turn a blind eye to them and allows the existence of schools and hospitals that such migrants set up.

I. Turkish Laws on Citizenship

Under the Constitution of the Republic of Turkey, anyone bound to the state through the bond of citizenship is a Turk.[1] Turkey follows the principle of *jus sanguinis*; the child of a father or mother who is a Turkish citizen is also a Turkish citizen.[2] The Constitution also asserts that citizenship can be acquired based on the conditions provided by law and forfeited only in cases determined by law.[3]

The 2009 Citizenship Law provides that Turkish citizenship can be acquired by birth or after birth.[4] Citizenship acquired by birth will be automatically acquired on the basis of descent or place of birth and will be effective from the moment of birth.[5] A child born to a Turkish mother or a Turkish father in a marriage either in Turkey or abroad, or born to a Turkish mother and alien father out of wedlock, is a Turkish citizen.[6] A child born to a Turkish father and an alien mother out of wedlock will acquire Turkish citizenship provided that the principles and procedures ensuring the establishment of descent are met.[7] As for citizenship based on place of

---

[1] CONSTITUTION OF THE REPUBLIC OF TURKEY (as last amended Mar. 17, 2011, by Act No. 6214), art. 66(1), http://global.tbmm.gov.tr/docs/constitution_en.pdf, *archived at* https://perma.cc/PUM7-NG28.

[2] *Id*. art. 66(2).

[3] *Id*. art. 66(3).

[4] Türk Vatandaşlığı Kanunu [Turkish Citizenship Law], No. 5901, May 29, 2009, *as last amended* effective Jan. 6, 2017), art. 5, RESMÎ GAZETE [OFFICIAL GAZETTE], No. 27256 (June 12, 2009), http://www.mevzuat.gov.tr/MevzuatMetin/1.5.5901.pdf, *archived at* https://perma.cc/RJ4E-4AUW, English translation *available at* http://eudo-citizenship.eu/NationalDB/ docs/TUR%20Turkish%20citizenship%20law%202009%20%28English%29.pdf, *archived at* https://perma.cc/PPS4 -BM3B. For the Law's implementation regulations, see Türk Vatandaşliği Kanunun Uygulanmasina İlişkin Yönetmelik [Implementation Regulation of the Law on Turkish Citizenship], 2010/139, RESMÎ GAZETE, No. 27554 (Apr. 6, 2010), http://www.resmigazete.gov.tr/eskiler/ 2010/04/20100406-9.htm, *archived at* https://perma.cc/JN3T-SMQE.

[5] Turkish Citizenship Law art. 6(1).

[6] *Id*. art. 7(1) & (2).

[7] *Id*. art. 7(3).

birth, a child who is born in Turkey and who has not acquired "the citizenship of any state by birth through his/her alien mother or father is a Turkish citizen from the moment of birth."[8] In addition, any child (defined as a person under the age of eighteen[9]) found in Turkey is deemed to have been born in Turkey unless otherwise proven.[10] Citizenship may be acquired after birth either by a decision of the competent authority if certain conditions are met, by adoption, or by the right to choice of citizenship.[11]

Under the 2013 Law on Foreigners and International Protection, a "foreigner" is defined as any person who does not have a citizenship bond with Turkey.[12] The Law "provides for specific deportation procedures to ensure consistent and humane treatment for unauthorized migrants and other removable noncitizens, including "limiting detention in removal centers to six months (or up to a year in cases of noncooperation)."[13] The Law lists among the persons who are subject to removal those who "breach the terms and conditions for legal entry into or exit from Turkey" and those determined to have entered Turkey despite an entry ban.[14] However, persons exempted from a removal decision include those who would be at risk in case of travel "due to serious health condition, age, or pregnancy," with assessment of the eligibility for exemption made on a case-by-case basis.[15] Moreover, the Law provides for issuance of a humanitarian residence permit in cases, for example, "where the best interest of the child is of concern," where removal is "not reasonable or possible," and when "extraordinary circumstances exist."[16] The permit is granted upon approval of the Ministry of Interior for a maximum period of one year and is renewable by the relevant governorate "without seeking the conditions for other types of residence permits."[17] The Law also contains provisions to protect stateless persons.[18]

---

[8] *Id*. art. 8(1).

[9] Yabancılar ve Uluslararası Koruma Kanunu [Law on Foreigners and International Protection], No. 6458, Apr. 4, 2013 (in force Apr. 11, 2014, *as last amended* effective Aug. 25, 2017), art. 3(1)(e), http://www.mevzuat.gov.tr/MevzuatMetin/1.5.6458.pdf, *archived at* https://perma.cc/Z823-FKUZ, unofficial English translation available on the website of the Republic of Turkey Ministry of Interior Directorate General of Migration Management, *at* http://www.goc.gov. tr/files/files/eng_minikanun_5_son.pdf, *archived at* https://perma.cc/9VPV-GWYZ.

[10] Turkish Citizenship Law art. 8(2).

[11] *Id*. art. 9(1). The Law points out, however, that "fulfilment of the stipulated conditions does not grant that person an absolute right in the acquisition of citizenship." *Id*. art. 10(1).

[12] Law on Foreigners and International Protection art. 3(1)(ü).

[13] Rebecca Kilberg, *Turkey's Evolving Migration Identity*, MIGRATION POLICY INSTITUTE (July 24, 2014), http://www.migrationpolicy.org/article/turkeys-evolving-migration-identity, *archived at* https://perma.cc/L4VA-L954; Law on Foreigners and International Protection art. 57(3).

[14] Law on Foreigners and International Protection art. 54(1)(h) & (ı).

[15] *Id*. art. 55(1)(b) & (2).

[16] *Id*. art. 46(1)(a), (b) & (f).

[17] *Id*. art. 46(1). Foreigners who have been granted the permit must register with the address-based registration system within twenty working days of the permit issuance date. *Id*. art. 46(2).

[18] *Id*. arts. 50 & 51.

II. Treatment of Irregular Migrants

A. Terminology

The Law on Foreigners and International Protection uses the terms "regular migration" and "irregular migration" (*düzensiz göç*) to distinguish entry into, stays in, or exits from the country through legal versus illegal channels.[19] The Directorate General of Migration Management (DGMM)[20] defines "irregular migration" more specifically as

> entry into or stay in the country through illegal channels or entry into the country legally but not leaving the country within the period granted them to leave. Irregular migration should be assessed separately for destination, transit and origin country.
>
> For the countries of destination, irregular migration includes the persons who enter into the country illegally or who enter the country legally but do not leave the country within the period granted them to leave while for the countries of origin, it includes the persons who cross the border of the country without complying with the necessary obligation for leaving her/his country. For the countries of transit, it includes the persons who enter the country legally or illegally in order to arrive in the country of destination from the country of origin and use this country as a transit country and leave its border.[21]

An "irregular migrant" (*düzensiz göçmen*) is defined in a Turkish-language *Glossary of Migration Terms* as "[a] person who lacks legal status in the transit or host country due to illegal entry or expiration of the visa."[22]

B. Practice

Turkey does not appear to have an official program similar to the Deferred Action for Childhood Arrivals (DACA) program of the United States, but in reality the children of irregular migrants are generally allowed to stay in the country.

According to a 2015 news report, the Turkish government allows citizens of its neighboring Asian countries to enter Turkey freely, with the result that citizens of those countries, "such as Georgia, Moldova, Ukraine, and Armenia come to Turkey to make a better living, entering

---

[19] *Id*. art. 3(1)(ı).

[20] The DGMM is responsible for developing migration-related legislation and strategies; coordinating efforts to combat irregular migration; standardizing migration practices; registering and determining potential refugees' status; and ensuring protection for human trafficking victims, stateless persons, and recipients of temporary protection. Kilberg, *supra* note 13; Law on Foreign and International Protection arts. 103–104.

[21] *Irregular Migration: General Information*, DIRECTORATE GENERAL OF MIGRATION MANAGEMENT OF THE MINISTRY OF INTERIOR OF THE REPUBLIC OF TURKEY, http://www.goc.gov.tr/icerik6/general-information_917_1062_8874_icerik (last visited Sept. 13, 2017), *archived at* https://perma.cc/LV47-R4ZQ.

[22] GÖÇ TERIMLERI SÖZLÜĞÜ [GLOSSARY OF MIGRATION TERMS], No. 18 (IOM, 2009), http://www.goc.gov.tr/files/files/goc_terimleri_sozlugu.pdf, *archived at* https://perma.cc/J9V5-QQ56.

without visas or on tourist visas and then overstaying those visas."[23] While some Armenians have stayed in Turkey for many years, "others are new arrivals. Their exact numbers are unclear, as the bulk of them are undocumented."[24] Yasar Yakis, former Foreign Minister, estimated there were 70,000 undocumented Armenians in Turkey in 2006.[25] Reuters reported in 2016 that between 10,000 to 30,000 undocumented Armenians lived in Istanbul, numbers "dwarfed by the 3 million Syrians and hundreds of thousands of Iraqis who have fled war" and arrived in Turkey.[26]

It appears that these irregular migrants are generally tolerated; thus, a de facto hidden Armenian secondary school set up in 2008, with the diploma it provides recognized in Armenia, continued to grow with the influx of more immigrants from Armenia over time.[27] The school's students cannot officially enroll in Turkey's minority schools in Turkey; "[t]hey can only be guest students and receive an education without getting a diploma at the end of their studies."[28] Although Turkish authorities know about the school, they reportedly tolerate it, and "Turkey's Directorate General of Foundation . . . even provided food supplies to the school, although the textbooks are brought from Armenia."[29] Periodically, however, the government issues threats of deportation; for example, on April 15, 2015, Turkish President Recep Tayyip Erdogan stated that "Turkey retained the right to deport the estimated 100,000 non-Turkish Armenian nationals working in Turkey."[30]

III. Syrian Refugees under Temporary Protection

Syrian refugees in Turkey are handled in accordance with the Law on Foreigners and International Protection and other measures, such as a by-law of January 15, 2016, allowing Syrians under temporary protection access to the labor market, and the Turkey-European Union Action Plan on Migration, under which the EU committed to the allocation of €3 billion (about US$3.6 billion) "to be used for the urgent needs of Syrians in Turkey, such as education and health." The EU has pledged to allocate an additional €3 billion by 2018.[31]

---

[23] Umut Uras, *Armenian Immigrants Look for a Better Life in Turkey*, AL JAZEERA (Apr. 20, 2015), http://www.aljazeera.com/news/2015/04/armenian-immigrants-life-turkey-150420070803126.html, *archived at* https://perma.cc/4G52-JQ83.

[24] *Id*.

[25] *Id*.

[26] Ayla Jean Yackley, *Armenian Migrants in Turkey Live in Shadow of Century-Old Massacre*, REUTERS (Apr. 24, 2016), http://www.reuters.com/article/us-turkey-armenia/armenian-migrants-in-turkey-live-in-shadow-of-century-old-massacre-idUSKCN0XL059.

[27] Uras, *supra* note 23.

[28] *Id*.

[29] *Id*.

[30] *Id*.

[31] *Implementation of Turkey-EU Agreement of 18 March 2016*, MINISTRY OF FOREIGN AFFAIRS OF THE REPUBLIC OF TURKEY, http://www.mfa.gov.tr/implementation-of-turkey_eu-agreement-of-18-march-2016.en.mfa, *archived at* https://perma.cc/A4XF-BUEE.

Of the Syrians in Turkey needing special protection, more than three-quarters are children and women; 44% are children under the age of eighteen, and 12% of those with temporary protection status as of July 2017 were age four and under.[32] Reportedly, "[b]etween May 2011 and May 2017, more than 224,000 babies were born in Turkey to displaced Syrians. For the time being, most of these children are stateless, as they are neither granted Turkish nor Syrian citizenship at birth."[33] Because the prospects for the refugees' return to Syria are bleak for the near future, education of the children is a major concern; of more than 967,000 school-aged Syrian children in Turkey, "492,000 (50.8 percent) are receiving education, despite the language barrier and limited capacity of schools," a number "expected to reach 650,000 (65 percent) in the 2017–18 academic year."[34] However, "60 percent of these students are being taught in Arabic, under a Syrian curriculum, in 'temporary education centers,'" with the education of questionable quality and "not optimal for the integration of students into Turkish society."[35]

[32] M. Murat Erdoğan, *Thinking Outside the Camp: Syrian Refugees in Istanbul*, MIGRATION POLICY INSTITUTE (Aug. 9, 2017), http://www.migrationpolicy.org/article/thinking-outside-camp-syrian-refugees-istanbul, *archived at* https://perma.cc/XED4-33EQ.

[33] *Id*.

[34] *Id.*

[35] *Id.* The author adds that "more than 450,000 children have not been in a classroom since 2011, potentially representing a lost generation." *Id.*

United Kingdom

Clare Feikert-Ahalt
Senior Foreign Law Specialist

SUMMARY The United Kingdom has a robust system of laws relating to immigration and citizenship and it actively enforces these laws. It has recently moved to a points-based migration system to help retain talented migrants in the country. Entry through many of the points-based system options provides a path to citizenship, if a continuous residence requirement is met.

The UK Border Agency is responsible for policing the borders around the UK, and works to ensure that those entering the UK do so with proper authorization. Illegal immigration continues to occur despite the relatively robust border controls that exist and the hefty civil penalties that individuals who hire illegal immigrants face. There are a number of criminal offenses that specifically apply to individuals in the country illegally, including entering the country without due authorization, overstaying visas, breaching conditions attached to visas, and assisting illegal immigrants. Illegal immigrants caught in the UK face deportation and/or criminal prosecution.

Immigration rules enable certain children unlawfully resident in the UK and adults who have resided unlawfully in the country for long periods of time to regularize their status, if continuous residence and other requirements are met.

I. Introduction

The United Kingdom of Great Britain and Northern Ireland (UK) is the collective name of four countries: England, Wales, Scotland, and Northern Ireland. The four separate countries were united under a single Parliament in London, known as the Parliament at Westminster, through a series of Acts of Union. The United Kingdom recently has undergone a period of devolution with the creation of a Scottish Parliament, a Welsh Assembly, and a Northern Ireland Assembly (currently suspended) that can legislate in certain areas. Citizenship and nationality[1] are not devolved areas, however, and remain the responsibility of the Parliament at Westminster. The Secretary of State for the Home Department (a member of the British executive branch) and his department, commonly referred to as the Home Office, has responsibility for immigration and nationality issues.

[1] "Nationality" refers to the status of those individuals who are British citizens, British subjects with the right of abode in the United Kingdom and thus outside the scope of the United Kingdom's immigration control, and citizens of British Overseas Territories. In this report, the term "citizenship" is used to include nationality. These terms are commonly interchanged. Nationality has been defined as a person's international identity that demonstrates they belong to a state, as evidenced by a passport. Citizenship has been considered to be more "a matter of law determined by the facts of a person's date and place of birth, those of their parents and the application of the provisions of the relevant legislation," and concerns with the rights, duties, and opportunities that a person has within a state, such as voting rights, military service, and access to healthcare. LAURIE FRANSMAN, FRANSMAN'S BRITISH NATIONALITY LAW 12 (2d ed. 1998).

Since 1891 it has been established at common law that "no alien has any right to enter [what is now the UK] except by leave of the Crown."[2] The Aliens Restriction Act 1914,[3] the Aliens Restriction (Amending) Act 1919,[4] and Rules and Orders made under these Acts[5] gave the common law a statutory basis and formed the restrictions on immigration for much of the twentieth century. The statutory regime governing immigration in the UK is currently contained in the Immigration Act 1971[6] and the Immigration Rules[7] made under it. The Immigration Rules are not legislation or regulations per se, but are published as House of Commons Papers and are considered to be part of the law.[8]

Section 3 of the Immigration Act requires individuals who are neither British or Commonwealth citizens with the right of abode in the UK, nor members of the European Economic Area, to obtain leave to enter the UK from an immigration officer upon their arrival.

II. Illegal Immigration

The UK government varies between calling individuals present in the country without authorization "illegal immigrants" and "irregular migrants."[9] In June 2017, the former head of immigration enforcement at the Home Office was reported as estimating that there were more than 1.2 million illegal immigrants living in Britain, stating that most of those were individuals who entered the country legally but overstayed the period of time they were granted leave to remain.[10]

---

[2] Musgrove v. Chun Teeong Toy, [1891] A.C. 272, *followed in* Schmidt v. Home Office, [1969] 2 Ch. 149.

[3] Aliens Restriction Act, 1914, 4 & 5 Geo. 5, c. 12.

[4] Aliens Restriction (Amendment) Act, 1919, c. 92, http://www.legislation.gov.uk/ukpga/Geo5/9-10/92/data.pdf, *archived at* http://perma.cc/95WC-LYK4.

[5] Aliens Order, (1920) Stat R. & O. 448, *as amended*.

[6] Immigration Act 1971, c. 77, http://legislation.data.gov.uk/ukpga/1971/77/data.htm?wrap=true, *archived at* http://perma.cc/F2UG-QVBU.

[7] *Immigration Rules*, HOME OFFICE, https://www.gov.uk/guidance/immigration-rules (last updated Aug. 10, 2017), *archived at* http://perma.cc/7J5G-HWK7; R v. Chief Immigration Officer, Heathrow Airport, ex. p. Salamat Bibi, [1976] 3 All ER 843 (CA) (per Roskill, L.J.: "these rules are [not administrative practice and are] just as much delegated legislation as any other form of rule making activity . . . [and] to my mind, are just as much a part of the law of England as the 1971 Act itself.").

[8] *Immigration Rules*, *supra* note 7.

[9] *See, e.g.*, Home Office, *Guidance: Code of Practice on Illegal Immigrants and Private Rented Accommodation* (May 25, 2016), https://www.gov.uk/government/publications/right-to-rent-landlords-code-of-practice/code-of-practice-on-illegal-immigrants-and-private-rented-accommodation-for-tenancies-starting-on-or-after-1-february-2016, *archived at* https://perma.cc/533G-P58A; *Long-Term International Migration – Frequently Asked Questions and Background Notes*, OFFICE FOR NATIONAL STATISTICS (Aug. 24, 2017), https://www.ons.gov.uk/people populationandcommunity/populationandmigration/internationalmigration/methodologies/longterminternationalmigrationfrequentlyaskedquestionsandbackgroundnotes, *archived at* https://perma.cc/2Y43-JFJA; *Legal Guidance: Immigration*, CROWN PROSECUTION SERVICE, http://www.cps.gov.uk/legal/h_to_k/immigration/ (last visited Sept. 12, 2017), *archived at* https://perma.cc/C3T2-44RY.

[10] Kate McCann, *Hundreds of Thousands of Illegal Immigrants Drop off Radar in the UK Every Year According to Secret Figures*, THE TELEGRAPH (London) (June 16, 2017), http://www.telegraph.co.uk/news/2017/06/15/hundreds-thousands-illegal-immigrants-drop-radar-uk-every-year/, *archived at* https://perma.cc/B3NC-CPE7 (scroll down for

The UK has a considerable amount of legislation designed to both make it difficult for illegal immigrants to remain in the UK and to facilitate their removal, while complying with its obligations under the European Convention on Human Rights. Part 3 of the Immigration Act provides for a number of criminal offenses that apply to both illegal immigrants and those who aid them. They are extensive and include the offenses of illegally entering the country;[11] entering the country by deception; overstaying visas; and violating the terms of a visa, such as by working if this is not authorized.[12] Assisting unlawful entry into the UK,[13] employing an illegal immigrant, and renting private accommodation[14] to an illegal immigrant are all criminal offenses.[15] Recent legislation now prohibits illegal immigrants from having a UK driver's license and opening bank accounts in the UK.[16]

The Migration Observatory at the University of Oxford describes the UK as having three methods of dealing with illegal immigrants:

- administrative action and removal by the UK Border Agency;
- deportation for individuals and their children whose removal the Secretary of State considers conducive to the public good;[17] or
- assisting voluntary departure.[18]

While the legal framework applicable to illegal immigrants is strict, certain exceptions can be made for children who were born in the UK, as well as adults present illegally in the UK for a long period of time, as discussed below.

---

text); *Irregular Migration in the UK: Definitions, Pathways and Scale*, THE MIGRATION OBSERVATORY AT THE UNIVERSITY OF OXFORD (July 11, 2011), http://www.migrationobservatory.ox.ac.uk/resources/briefings/irregular-migration-in-the-uk-definitions-pathways-and-scale/, *archived at* https://perma.cc/4WTX-BBG8.

[11] Immigration Act 1971, c. 77, § 24.

[12] *Id*. § 24(1)(i), (ii).

[13] *Id*. § 25.

[14] Immigration Act 2014, c. 22, § 22, http://www.legislation.gov.uk/ukpga/2014/22, *archived at* https://perma.cc/9GD8-FAEC. *See also Guidance: Code of Practice on Illegal Immigrants and Private Rented Accommodation*, HOME OFFICE AND UK VISAS AND IMMIGRATION (updated May 25, 2016), https://www.gov.uk/government/publications/right-to-rent-landlords-code-of-practice/code-of-practice-on-illegal-immigrants-and-private-rented-accommodation-for-tenancies-starting-on-or-after-1-february-2016, *archived at* https://perma.cc/PU5T-4ZK6.

[15] Immigration, Asylum and Nationality Act 2006, c. 13, § 15, http://www.legislation.gov.uk/ukpga/2006/13/section/15, *archived at* https://perma.cc/UHM5-BNDC.

[16] Immigration Act 2014, c. 22, §§ 40, 46.

[17] *Id*. pt. III, § 24(1)(i)–(ii).

[18] *Deportations, Removals and Voluntary Departures from the UK*, THE MIGRATION OBSERVATORY AT THE UNIVERSITY OF OXFORD (July 19, 2016), http://www.migrationobservatory.ox.ac.uk/resources/briefings/deportations-removals-and-voluntary-departures-from-the-uk/, *archived at* https://perma.cc/ZC92-6Q9L. *See also Legal Guidance: Immigration*, CROWN PROSECUTION SERVICE, http://www.cps.gov.uk/legal/h_to_k/immigration/ (last visited Sept. 13, 2017), *archived at* https://perma.cc/C3T2-44RY.

III. Pathways to Legal Residence and Citizenship for Illegal Immigrants

A. Children

In 2012, Oxford University estimated that 120,000 undocumented children were resident in the UK. It believed that 65,000 of these children were born in the UK, which does not provide for birthright citizenship.[19] In 2008, the UK withdrew a reservation to the UN Convention on the Rights of the Child that had restricted the application of the convention with respect to children subject to immigration control.[20] In 2009, section 55 of the Borders, Citizenship and Immigration Act was enacted, which placed a duty on the Home Office to safeguard and promote the welfare of children as it exercises its functions to enable the UK to comply with the provisions of the Convention. Thus, the best interest of the child is now a guiding principle that must be followed in making any immigration decisions relating to a child.[21] Failing to follow this principle could render any decision made unlawful.[22]

As described below, the Immigration Rules enable certain children unlawfully resident in the UK and those who have resided unlawfully for long periods of time to regularize their status and either grant them citizenship, or put them on a pathway toward obtaining citizenship.

1. Children Born in the UK and Unlawfully Resident for the First Ten Years of Their Life

As noted, citizenship is not automatically granted to babies born in the UK. British citizenship is only granted to babies if their birth father or mother is a British citizen or settled in the UK. The UK follows the principle of *jus sanguinis*, which provides that the nationality of a child is the same as his or her parents. The British Nationality Act 1981 allows children born in the UK on or after January 1, 1983, to parents who were not British citizens or lawfully settled in the country to register to become British citizens.[23] Children are eligible for citizenship if they are ten years of age or older and have lived in the UK, lawfully or otherwise, for the first ten years of their life, spending no more than ninety days outside the UK each year.[24]

This citizenship is available to any child born in the UK and does not end at the age of majority (eighteen years of age), provided the applicant meets the criteria of being born in the UK and

---

[19] CORAM CHILDREN'S LEGAL CENTRE, THIS IS MY HOME: SECURING PERMANENT STATUS FOR LONG-TERM RESIDENT CHILDREN AND YOUNG PEOPLE IN THE UK (June 2017), at 1, http://www.childrenslegalcentre.com/wp-content/uploads/2017/06/Thisismyhome_ExecSummary.pdf, *archived at* https://perma.cc/GF2Q-8TF3.

[20] Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3, *available at* https://treaties.un.org/doc/Publication/MTDSG/Volume%20I/Chapter%20IV/IV-11.en.pdf, *archived at* https://perma.cc/SU9V-FWRJ.

[21] Borders, Citizenship and Immigration Act 2009, c. 11, § 55, http://www.legislation.gov.uk/ukpga/2009/11, *archived at* https://perma.cc/S4CJ-XGJU.

[22] CORAM CHILDREN'S LEGAL CENTRE, SECURING PERMANENT STATUS: EXISTING LEGAL ROUTES FOR CHILDREN AND YOUNG PEOPLE WITHOUT LEAVE TO REMAIN IN THE UK 3 (June 2017), *available at* http://cdn.basw.co.uk/upload/basw_85040-5.pdf, *archived at* https://perma.cc/52P5-ABHB.

[23] Borders, Citizenship and Immigration Act 2009, c. 11, ss. 42(5), 58

[24] British Nationality Act 1981, c. 61, § 1(4), https://www.legislation.gov.uk/ukpga/1981/61/part/I, *archived at* https://perma.cc/VF7X-3556.

continuously residing there for the first ten years of life. To register, the family must complete an application and pay £749 (approximately US$1,000).[25] Provided all the criteria are met and the child is of good character, the application will be granted, and the child will become a British citizen with all the benefits that brings.

2. Children Born in the UK and Unlawfully Resident for Seven Years or More

Children under the age of eighteen who were born in the UK on or after January 1, 1983; who have lived in the UK for seven years or more; and for whom returning home would be unreasonable may apply for leave to remain on the grounds of the right to respect for private life, a legal concept provided for by article 8 of the European Convention on Human Rights.[26] When considering whether returning the child to his/her home country is unreasonable, the Home Office considers the following:

1. Whether there would be a significant risk to the child's health
2. Whether the child would be leaving the UK with their parents
3. The extent of wider family ties in the UK
4. Whether the child is likely to be able to reintegrate readily into life in another country:
    a. including whether they or their speak, read and write the language
    b. whether they or their parents have social or familial ties there
    c. if they are entitled to citizenship
    d. whether they have visited the country for more than a few weeks
    e. whether they have any cultural ties to the country of origin.[27]

There is no guarantee that an application for discretionary leave to remain will be approved; if approved, leave to remain is for a period of two-and-a-half years, after which it may be renewed. A service fee of £500 (approximately US$600) for the National Health Service must be paid at the same time as a £649 (approximately US$850) application fee. The child will not be eligible for benefits upon attaining eighteen years of age. After ten years of continuous residence in this status, the individual is entitled to apply for citizenship.

---

[25] Home Office, Form T (July 2017), https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/625091/form_t_07_17.pdf, *archived at* https://perma.cc/43FP-6HBN.

[26] Immigration Rules ¶ 276ADE, https://www.gov.uk/guidance/immigration-rules/immigration-rules-part-7-other-categories, *archived at* https://perma.cc/K3WB-TJ8L. European Convention for the Protection of Human Rights and Fundamental Freedoms, *opened for signature* Nov. 4, 1950, 213 U.N.T.S. 222, *available at* http://www.echr.coe.int/Documents/Convention_ENG.pdf, *archived at* https://perma.cc/TEK3-MLMF. The European Convention on Human Rights was incorporated into the national legislation of the United Kingdom by the Human Rights Act 1998, c. 42, https://www.legislation.gov.uk/ukpga/1998/42, *archived at* https://perma.cc/7R9Z-Q95V.

[27] CORAM CHILDREN'S LEGAL CENTRE, SECURING PERMANENT STATUS, *supra* note 21, at 19 (citing Home Office, *IDI Family Migration*, App. FM, § 1.0b, Aug. 2015, p. 57), *available at* http://cdn.basw.co.uk/upload/basw_85040-5.pdf, *archived at* https://perma.cc/52P5-ABHB.

3. Individuals Between the Ages of Eighteen and Twenty-Four Brought to the UK as a Child

Individuals who are between eighteen and twenty-four years of age, and who have resided unlawfully in the UK for more than half of their lives, are another category of persons eligible to apply for leave to remain on the grounds of private life. There is no guarantee the application will be granted; if granted, leave to remain will be for a period of two-and-a-half years, after which it may be renewed. After ten years of continuous residence in this status, the individual may apply for citizenship.[28]

4. Implementation

A report issued in 2015 noted that there had been a low number of applications under these rules, with 1,560 applications of leave to remain for children being granted between 2012 and 2015, and, during the same period, 1,585 children were granted settlement on a discretionary basis or a long period of residence. The report ascribed these low numbers to the complexity of laws in the area, a lack of knowledge, a lack of free legal advice and representation, and the high cost of application fees.[29]

B. Adults

Individuals who have lived in the UK unlawfully, or have a mix of lawful and unlawful residence, for twenty years or more may apply for leave to remain on the grounds of private life.[30] If the application is successful, the individual will be granted leave to remain for two-and-a-half years, and this is renewable. Once the individual has lived in the UK continuously with leave under these provisions for ten years, he or she may apply for indefinite leave to remain.[31]

IV. Conclusion

The provisions outlined in Part III, above cannot be considered in isolation from the UK's general immigration law and enforcement efforts. As noted, the UK has robust provisions designed to prevent illegal immigrants from remaining in the UK. Legal aid to help unlawful immigrants secure access to legal advice has been cut; the policy of deport first, appeal later is fully implemented; and illegal immigrants' access to basic services is severely restricted, which not only makes it difficult for them to live in the UK, but also makes it difficult for them to provide evidence showing the period of time they have lived in the UK illegally.[32]

---

[28] Immigration Rules ¶ 276ADE, https://www.gov.uk/guidance/immigration-rules/immigration-rules-part-7-other-categories, *archived at* https://perma.cc/K3WB-TJ8L.

[29] CORAM CHILDREN'S LEGAL CENTRE, THIS IS MY HOME, *supra* note 19, Executive Summary.

[30] Immigration Rules ¶ 276ADE, https://www.gov.uk/guidance/immigration-rules/immigration-rules-part-7-other-categories, *archived at* https://perma.cc/K3WB-TJ8L. For applications made prior to this date, the old rule of fourteen years of continuous unlawful residence must be followed.

[31] *Id.*

[32] *Immigration Act: Overview*, HOME OFFICE AND UK VISAS AND IMMIGRATION (updated July 16, 2017), https://www.gov.uk/government/publications/immigration-bill-2015-overarching-documents/immigration-bill-201516-overview-factsheet, *archived at* https://perma.cc/N9UT-8XS3.