

Registration of children as British Citizens: Legacy cases and indefinite leave in the UK

A number of people have had their asylum cases decided as legacy cases by the UK Border Agency. In the majority of those cases applications could have been made a number of years ago resulting with an eventual grant of indefinite leave to remain in the UK. Some cases were decided and indefinite leave to remain granted outside the immigration rules. Whatever the basis upon which indefinite leave to remain in the UK was granted the fact of the matter is that those people are now considered settled in the UK.

As people waited for their cases to be decided a number of children were born. The arrival of children did not necessarily require any valid leave to remain in the UK. Many children were born well before either of the parents gained status. It is significant to note that children born in the UK before any of the parents gained indefinite leave to remain could be registered as British citizens as soon as any of the parents gain indefinite leave to remain in the UK.

In terms of the British Nationality Act 1981

(3) A person born in the United Kingdom after commencement who is not a British citizen by virtue of subsection (1), (1A) or (2) shall be entitled to be registered as a British citizen if, while he is a minor –

- (a) his father or mother becomes a British citizen or becomes settled in the UK ;
and
- (b) an application is made for his registration as a British citizen.

The significant issue being the attainment of settled status, referred to as having indefinite leave to remain in the UK. The children born in the UK to parents who are on work permits could be registered as British citizens as soon as any or both of the parents attain indefinite leave to remain.

It is also important to note that those children born to parents who are in the armed forces could also be registered as British citizens. This provision is now provided for by the Borders, Citizenship and Immigration Act 2009. This applies to a child born in the UK to a parent who is a serving member of the armed forces on or after 13th January 2010. Furthermore, any child who spends ten years in the UK irrespective of the status of the parents can be registered as a British citizen.

A broad discretion to register any child (i.e. under 18), subject to a good character test for the children over 10 years is also available. This is how children born to fathers not married to their mothers before 1 July 2006 have been dealt with. This only works whilst a child is still a minor on the date of the application. This means that there is a total discretion to register any minor under section 3 (1) of the act outlined above.

The importance of British nationality to children would help regularise the status of some parents who may need to be present in the UK as the child grows. There are many decided cases, which would then be invoked to support applications for further

leave to remain in the UK on advice. This may also be read together with section 55 of the Borders act which highlights the welfare of the children. This helps parents gain their status. In the premises not all is lost in people's quest to regularise their status in the UK. Whilst the grant of indefinite leave to remain in the UK outside the immigration rules was welcome it affected people with regards to family reunions. However, this could also be an advantage in a different way.

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