If You Have Children

If you are applying for the right to remain in the UK and you have a child/children, in many cases your child will form part of that application, as a dependant. If successful, they will usually get leave to remain in line with yours.

There are circumstances, however, when you may not be eligible for immigration status in your own right, but your child does have the right to remain or could have, and you may be able to apply for the right to remain in the UK on the basis of being their parent.

This page looks at applying for the right to remain in the UK as the parent of a child who may have the right to remain. This could be if you meet certain criteria and your child has British citizenship or may be eligible for citizenship; or if your child has lived in the UK for seven years. If your child has Indefinite Leave to Remain ("settled" status), you are not able to apply for leave to remain on this basis if you are already in the UK. You are able to apply for leave to enter the UK on this basis, but this section does not look at those types of applications.

If your child isn't British and hasn't lived in the UK for seven years, you may be able to make an application to stay based on your right to family life, though this is more difficult – see section below.

You can also find, towards the bottom of the page, information about gathering evidence to support an application for the right to remain in the UK based on the rights of a child.

If you are in a relationship with the child's other parent/carer and they have British citizenship or Indefinite Leave to Remain the applications in this section do not apply to you: you need to look at the information on applying to stay as a spouse/partner. See the Toolkit section on Family Members.

This page is not about unaccompanied children (children in the UK without their parent or guardian). For more information on unaccompanied children, see the Children's Legal Centre website.

In applications based on children in the UK, you may hear the term "best interests of the child" being used. This is also known as "Section 55", because it comes from Section 55 of the 2009 Borders, Citizenship and Immigration Act. It means that the Home Office are required by law to make sure that decisions concerning children safeguard and promote the welfare of children. The Home Office will always say they have considered the best interests of the children, but may go on to refuse an application. It might be a useful phrase to know if you are trying to explain why your application should be granted (to the

Home Office, or – if you are appealing a refusal – to a judge).

A child with British citizenship

If you have a child who has British citizenship, you may be able to apply for the right to remain in the UK under part of the immigration rules. These rules are known as "Appendix FM". The FM is short for "Family Members".

To apply under these rules, you need to be able to show that you have **sole parental responsibility** for your child or **direct access** (in person) to your child.

This access can either be as agreed with the parent/carer that your child normally lives with, or access ordered by a family court in the UK.

You also need to be able to show that you are taking, and intend to continue to take, an **active role in your child's upbringing**. See section on Evidence below.

If your child normally lives with the other parent, that parent must have British citizenship or be "settled" in the UK (for example, they have Indefinite Leave to Remain) for you to apply under these rules. This is likely to be the case anyway, for your child to have obtained British citizenship (see below).

The rules also say that you must be able to provide for the child (and any other family you have). This means you must be able to house you, your child and other family adequately, and provide for them without needing recourse to public funds (welfare benefits or homelessness support).

There are other criteria you must meet, such as having a good level of English.

If, as the parent of a British citizen child, you do not meet the requirements of the immigration rules, you may be able to make an application outside of the immigration rules on the basis of your human rights (the right to family life, or "Article 8" rights). Read more below.

If you are in a relationship with the child's other parent/carer and they have British citizenship or Indefinite Leave to Remain, you need to look at the information on applying to stay as a partner. Read more in the Toolkit section on *Family Members*.

Is your child British?

A child may be British by birth. A child might be a British citizen if they were born in the UK on or after 1 July 2006 to a mother or father who is British or who has settled status (Indefinite Leave to Remain or EU Permanent Residence). If the child was born in the UK before 1 July 2006, to a British or settled mother, or a British or settled father who was married to the mother or later marries the mother, they might also be a British citizen.

A child may also be British by descent. That means they were born outside of the UK, but may have acquired the right to British citizenship through their parents.

If you are making an application on the basis of your child being a British citizen, you will need provide evidence of their citizenship.

The UK government website is useful for checking if you or your child is a British citizen: www.gov.uk/check-british-citizen

There are useful resources on understanding children's rights to British citizenship on the website of the Project for the Registration of Children as British Citizens, here: prcbc.wordpress.com/information-and-resources

Seven years in the UK

Until 2008, the Home Office had a seven-year policy for children, under which a child who had spent seven years in the UK would generally not be removed unless there were other significant factors to consider, such as the child's parent having a serious criminal conviction.

Although that policy no longer exists, the "seven years" factor is still considered in family cases and can be found in the immigration rules, Appendix FM.

The criteria for these applications are:

- that child is under 18 years old and is in the UK;
- that child has **lived in the UK for at least seven years immediately prior to the application**; and
- it would be **unreasonable to expect the child to leave the UK**.

As with applications based on your child being British (see section above), you need to show that you have **sole parental responsibility for your child or direct access (in person) to your child, and that you are taking, and intend to continue to take, an active role in your child's upbringing.**

If a non-British child has not lived in the UK for seven years prior to the application, they do not meet these criteria. However, you may still be able to argue that their "best interests" are not being considered (see above) and/or their "Article 8 rights" to family/private life would be disproportionately breached if you and they were not allowed to stay in the UK.

Family and private life

If your child isn't British and hasn't lived in the UK for seven years, you may be able to make an application to stay based on your right to family life, though this is much more difficult.

This would be based on a human rights argument: you and your child's right to family and/or private life in the UK.

This right is known as an Article 8 right, because it comes from Article 8 of the European

Convention on Human Rights, which is part of UK law through the Human Rights Act. This right will continue to exist after Brexit. Read more about Article 8 applications in the Toolkit section on *Human Rights*.

The Home Office's position is that the immigration rules cover the extent of the UK's obligations under human rights law, and so any Article 8 family/private life case that could be successful would meet the requirements of the immigration rules, such as if you have a British child or your child has lived in the UK for seven years.

However, the fixed immigration rules criteria cannot possibly cover all case-specific variations of cases, and the courts have since ruled that if a case does not meet the requirements of the immigration rules, Article 8 arguments should be considered outside of the rules.

You would need to try and demonstrate that you/your child being required to leave the UK would be a "disproportionate" breach of your right to family/private life in the UK.

Sometimes, the Home Office will say the breach is proportionate (or even that there will not be a breach) because you can maintain a relationship with your child through Skype, email and occasional visits.

You will need to show the strength of you and your child's connection to the UK, and why your family/private life cannot be maintained if you are removed from the UK. How would your removal from the UK damage your child? What impact would it have on their life? See section below on Evidence.

Factors that count against you in these arguments are things like poor immigration history and criminal convictions.

Evidence

You will need to show the Home Office that you meet the criteria of the application you are making.

If your child is a British citizen, you will need to provide proof of that. If you are applying on the basis that your child has been in the UK for seven years, you will need to document that very clearly.

Applications can be refused if you do not speak English, or if you are not financially independent. If you do speak English and are financially independent (meaning, you are not reliant on public funds such as benefits), you should provide evidence of this in your application.

Relationship

With any application based on the rights of your child, you will need to prove they are your child.

You will need to explain what **relationship** you have with the child – are they your

biological child, adopted child, or step child? Or are you their legal guardian or other primary carer?

In any application based on a relationship, you will need to demonstrate a **genuine and subsisting relationship.** "Subsisting" means existing – can you show your relationship with your child still exists, and isn't just something you had in the past? In applications based on being a parent of a child with the right to remain, you need to prove you have an **"active role" in your child's upbringing and you plan to do so in the future.** The evidence for showing you have a genuine and subsisting relationship, and that you have an "active role" in your child's life, is likely to be the same. It may help to get supporting letters/statements to prove how you support your child, and how your child's needs may be being met by you. These might be from other family members, teachers (do you take your child to school and attend parents evenings?), or parents of other children at your child's school. It might also include letters from social workers or other appropriate professionals if your child has special behavioural, emotional or learning needs. You could also include letters from the dentist and doctor confirming you take them to appointments. You will need to include proof of identity for the writers of the letters.

To demonstrate **sole parental responsibility,** the Home Office guidance says this would include evidence of decisions and/or actions being taken regarding the upbringing of your child under your sole direction, without the input of the other parent or any other person; that you are responsible for your child's welfare and for what happens to them in key areas of their child's life, and that others do not share this responsibility for your child. Responsibility might mean that you take the decisions regarding your child's education, health and medical treatment, religion, residence, holidays etc.

If your child normally lives with their other parent, and that parent is a British citizen or has Indefinite Leave to Remain in the UK, you will need to provide proof of this. The Home Office guidance says this would be: a British passport; or a foreign passport endorsed with "Indefinite Leave to Remain' or "no time limit"; or a letter from the Home Office confirming that the person is settled in the UK. You also need to provide evidence that your child resides with the British citizen or settled parent.

To show that you have **direct access** to your child, if you don't have sole responsibility for them and they don't live with you, you could provide a letter or formal statement from your child's other parent/carer; or a residence order or contact order granted by a court in the UK if applicable.

Life in the UK

It will be helpful to demonstrate **the life your child has established in the UK**, even if your child is a British citizen, because if there are strong factors in favour of removal of a parent, the Home Office may argue these outweigh the needs of the British citizen child. Have you got extended family in the UK that your child is dependent on? Are there other

support needs that can only be, or can better be, met in the UK?

Unreasonable to leave the UK

If you are applying because your child has been in the UK for seven years or more, you need to demonstrate i**t would not be reasonable to expect your child to leave the UK**. If your child has particular needs, make sure you provide evidence of this. If these are particularly severe, you should seek evidence from specialists, particularly if they have been providing services/support for your child. This might be a doctor, educational psychologist or psychiatrist, or other medical, mental health or educational professional. Would these needs be made worse if your child were to live outside of the UK? Is there a lack of appropriate support in the country the Home Office are suggesting you could move to? You will need to try and provide evidence of this.

Whether it would reasonable for a child to leave the UK and integrate into another country will depend on the individual, family and country circumstances. Factors might include whether you or your child is a citizen of the country and so able to enjoy the full rights of being a citizen in that country; whether you and/or your child has lived or visited the country before for significant periods of time – not just a few weeks' holiday; whether you or your child has existing family or social ties with the country; whether your child has attended school in that country. Are there differences in quality of education, health and other public services and social/economic opportunities that mean the best interests of your child would be significantly affected?

ACTION SECTION

Even if you have a lawyer helping you with your application, they will ask you to provide evidence to support your application.

If you are doing the application yourself, you or your friends/supporters will need to gather/provide evidence that shows you and your child meet the criteria for the application. Read the section above for ideas.

Making the application

Applications based on having children in the UK are generally not eligible for legal aid (in England and Wales).

It is possible to apply for exceptional legal aid funding, but the threshold for this is high.

As with many immigration applications, there are also "suitability" requirements, meaning that criminal convictions, "bad character", poor immigration history or unpaid NHS debts could disqualify you.

You need to make the application online. See the Home Office website: https://www.gov.uk/uk-family-visa/parent

Application Fee

At the time of writing, the fee for making the application from within the UK is £1033 (and an additional £1033 for each dependant included in the application).

See the Home Office website for the latest information on this (link above).

Fee waiver

If you are destitute and cannot afford to pay the application fee, you can apply for a fee waiver. You will need to show evidence that you are destitute, or that you would become destitute by paying the fee.

The Home Office definition of being destitute is if you/your dependents do not have adequate accommodation or any means of obtaining it (whether or not your other essential living needs are met); or you have adequate accommodation or the means of obtaining it, but cannot meet your other essential living needs.

The Home Office will assess whether you have no or very limited disposable income:

- Could you pay the fee now?
- If not, could you realistically afford to save money for the fee so that you could apply within 12 months (if it were reasonable to delay your application for this length of time)?
- Could you borrow money from family or friends?
- Is there any prospect of your financial circumstances changing within the next 12 months?

You will need to show that you can't pay the fee and couldn't save the money for the fee in order to be eligible for a fee waiver.

It is essential that you provide evidence of your inability to pay the fee. Evidence might include:

- Information about and proof of your accommodation (or lack of it). Who provides the accommodation? If you do not pay for it, who does? Provide proof of this.
- If you have some income you will need to show how much this is. If you have a job, provide payslips or documents that show income over a period of time, like a P45 or P60. You will need to show that this income is not enough to meet you and your dependents' essential living needs and pay the application fees.
- If you are receiving asylum support, or support from the Local Authority (under the Children Act) the Home Office position is that, by being in receipt of these kinds of support, you are not destitute. Therefore you will need to show that paying the fees would make you destitute. Do you have any money left over from this support once

your essential living needs are met? We know this sounds like a ridiculous question as the support amounts are so low, but you need to prove this. What do you spend the money on? Provide proof of utility bills (heating, gas, water); food bills; essential travel costs; bank statements if you have them.

- If you are being supported by friends/the community/a charity, provide proof of this. What/how much are they giving you? Could they give you more? How long will this support continue?
- If you are street homeless, can someone provide statements to prove this? Were you previously evicted from a property and if so, do you have a copy of the eviction notice? Do you have records of interaction with any homeless charities?

The Home Office may carry out "financial and residential enquiries", such as credit checks, interviews and home visits, when deciding on your fee waiver application.

To apply for a fee waiver, you need to apply online: https://visas-immigration.service.gov.uk/product/fee-waiver

Health surcharge

You will need to pay the health surcharge as well as the application fee, unless you fall into one of the exempt categories or can prove you are destitute and entitled to a fee waiver.

Read more about the health surcharge in Toolkit section *Entering the UK.*

ACTION SECTION

The fee waiver form quite be quite difficult to fill out. If you do not have a legal representative, friends or supporters may be able to help you with this (but should not give advice on what to write in your answers as this could be considered "legal advice".

Read about the evidence needed for proving your destitution in the section above. Friends and supporters may be able to help with gathering (and maybe providing) the essential evidence to help your application be successful.

If a fee waiver is not granted, your supporters/community could help raise the money for the application/health surcharge. Some people have successfully raised immigration fees through online fundraisers.

If your application is refused

If your application is refused, you may have a right of appeal.

The Home Office may say, however, that they consider your human rights claim to be "clearly unfounded" and "certify" your claim. This means you do not have the right to

appeal the refusal in the UK. Read more about that in the *Appeals* section of the Toolkit.

If you are subject to deportation after a criminal sentence and you make an application to stay based on your child, the Home Office may certify the application unless you can show that “serious and irreversible harm” would occur if you had to appeal outside of the UK. Read more in the *Removal/Deportation* section of the Toolkit.

If you do not have the right to appeal the refusal, you may wish to consider a judicial review. Read more in the *Judicial Reviews* section of the Toolkit.

If you do have the right to appeal, it’s important that people who may have provided witness statements for your application – about your child, your relationship with your child, and your life together in the UK – attend the hearing. They may be asked to give evidence. If you had a lot of witness statements (for example, more than ten), they may not all need to attend. If you have a lawyer representing you, they will give you advice about this. Evidence from witnesses who are unwilling to attend the appeal hearing – or are seen to be, even if they simply cannot attend the hearing – will generally be taken less seriously.

If your application is successful

If you are successful in your application, you will receive leave to remain in the UK for 2.5 years.

This is renewable, and you will be able to apply for Indefinite Leave to Remain (ILR) after a certain number of these 2.5 year periods – see *Family Members* section of the Toolkit for more information.

The Home Office may apply a “no recourse to public funds” restriction on your leave to remain, meaning you cannot access welfare benefits and housing support. If you are destitute or there are compelling reasons relating to the welfare of a child why this should not be applied to you, you need to tell the Home Office this and provide evidence.