Human Rights: family and private life

You may be able to apply for the right to remain in the UK based on a human rights argument: your 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.

Family and private life

Your family life consists of your relationships with members of your family. Your relationships with your wife, husband, civil partner, long-term partner or any children under 18 are considered to be family life that you have a right to have protected under Article 8 of the Convention. Your life with other family members is not always considered to amount to family life under Article 8.

Your private life could include things like your work or studies, your life with your friends and neighbours, and involvement with your local community or charity activities. It also includes long-term NHS medical treatment. You can read more about Article 8 (and Article 3) arguments based on medical grounds here: righttoremain.org.uk/human-rights-cases-medical-grounds/

Living in the UK does not, in itself, amount to private life in this legal sense. Not everything we think would be family and private life would be defined as Article 8 family/private life. The definition is case-specific and is shaped by case law.

The Home Office’s position is that, in terms of family life, only relationships between spouses and/or between parents/carers and children under 18 engage family life in the Article 8 sense. The courts, however, have tended to disagree and prefer a case-specific determination of whether someone’s family or private life engages Article 8.

The 2014 Immigration Act gave instructions to judges on how to decide Article 8 human rights appeals. That legislation says that “little weight” should be given to a private life or relationships formed if you are in the UK unlawfully, or to private life established when your immigration status in the UK is “precarious”. The Supreme Court has recently decided that precarious immigration status means anything less than Indefinite Leave to Remain.

This means that it is difficult to succeed with family life arguments based on time in the UK when, for example, you had no application pending with the Home Office and no leave to remain, or private life arguments when you had no right to remain or had time-limited leave
to remain. Leave to remain may still be granted in these circumstances, if the case is exceptionally strong.

**Article 8**

Article 8 of the European Convention on Human Rights says:

1. Everyone has the right to respect for his or her private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is 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.

**Article 8 is not absolute.** This means there are circumstances in which this right can, lawfully, be breached.

Human rights law recognises that people have the right to a family and private life, but also recognises that the state has the right to exercise immigration control.

Article 8 arguments for the right to remain in the UK are therefore always about weighing up these opposing rights – if you can prove that the breach to your Article 8 rights would be so serious that it outweighs the state’s right to remove/deport you (a “disproportionate breach”), you should be granted leave to remain.

The Home Office may admit that they are breaching your Article 8 rights, but say that it is a proportionate breach when considering other factors, and that your grounds to stay don’t outweigh the government’s right to exercise immigration control.

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

Factors that could be in your favour are family in the UK (particularly British children), lack of connection to your country of origin, length of time in the UK and community connections, and some medical and mental health needs.

Sometimes, the Home Office will say the breach of your family/private life rights is proportionate (or even that there will not be a breach) because your family members could leave the UK with you (even if they have the right to remain in the UK or even British citizenship), or they can keep in touch with you by Skype, email and occasional visits.

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.
However, the fixed immigration rules cannot cover all the variety of people’s situations, and
the courts have ruled that if a case does not meet the requirements of the immigration
rules, Article 8 arguments should be considered outside of the rules.

Family/private life applications

There are quite a few different situations in which you may wish to argue you have the
right to remain in the UK because of your right to family/private life.

• If you are seeking asylum, human rights arguments should be made at the same
time as applying for asylum.  See Claim Asylum section of the Toolkit.

It is common, however, for human rights grounds (such as a relationship or the birth of a
child) to arise after an initial application for asylum.

• If you appealing a refusal of your asylum claim, you or your lawyer may want to
raise your right to family/private life at that point.  See Appeals section of the Toolkit.

• If you are “appeal rights exhausted”, your right to family/private life may form the
basis of your further submissions to be considered as a fresh claim. This may
be the only basis of your further evidence, or you may be submitting evidence about
your family/private life in the UK as well as new evidence about your asylum claim.
See Fresh Claims section of the Toolkit.

• If you are an unaccompanied child, you may want to argue that your family/private
life in the UK means your leave to remain should be extended, when you are
nearing 17.5 years old.  Read factsheet from Coram Children’s Legal Centre:
https://www.childrenslegalcentre.com/resources/uasc-leave/

• You are likely to want to prove the strength of your family/private life in the UK if you
are applying to stay based on being the parent of a child in the UK.  See If You
Have Children section of the Toolkit.

• You may need to demonstrate the strength of your family/private life in the UK if you
are applying as a partner of someone in the UK, especially if you do not meet the
rules regarding minimum income.  See Family Members section of the Toolkit.

• You may need to prove the strength of your family/private life in the UK if you are
trying to stop the Home Office from removing you from the UK, or deporting
you after a criminal conviction.  See Removal/Deportation section of the Toolkit.

• “Private life” can cover situations when you have lived in the UK for a long time,
for example if you have spent 20 years in the UK; or if you are between 18 and 24
years old and you’ve lived continuously in the UK for more than half your life.  See
Long Residence section of the Toolkit.

• If you need medical treatment that is not available to you in your country of
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**origin**, you may wish to apply for the right to stay based on your right to private life.

Read our legal blog post on healthcare cases: [https://righttoremain.org.uk/human-rights-cases-medical-grounds/](https://righttoremain.org.uk/human-rights-cases-medical-grounds/)

Article 8 family/private life cases, if they are not part of an asylum application, are generally not eligible for legal aid.

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

If your application isn’t part of an asylum claim, you are also likely to have to pay the application fee. The fee will depend on what kind of application you are making, if you are in the UK or outside the UK, and how many dependents you are including in the application. See sections above for the relevant fees for different types of applications.

**If you are successful in your application, the leave to remain you are granted will depend on the type of application you have made.** See sections above for more information on this.

**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/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 here: 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 surcharge in the Toolkit section Entering the UK.
If your application is refused

If an application that includes arguments based on your family/private life 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 human rights, 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 – about your family and private life in the UK – attend the hearing. They may be asked to give evidence. If you had a lot of witnesses 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.

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 fee /health surcharge. Some people have successfully raised immigration fees through online fundraisers.