

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.

The right to family and private life is known as an **Article 8** right, because it comes from Article 8 of the European Convention on Human Rights (ECHR), which is part of UK law through the Human Rights Act. This right continues to exist after Brexit. See below for more information about Article 8.

This page looks at what family and private life means and in what kinds of applications family and private might be relevant. Read this page for information about making an application, including fees and fee waivers if you can't afford to pay the fee. Read this page to find out what happens if your application is successful, and what to do if your application is refused.

Family and private life

Your family life consists of your relationships with members of your family.

In terms of what Article 8 of the European Convention on Human Rights recognises as family life, your relationships with your wife, husband, civil partner, long-term partner or any children under 18 are considered to be family life. 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](#).

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 (immigration status), 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 [or her] home and his [or her] 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. *Also read: the Evidence page of this guide*

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.

You may be told by that you could make a human rights application based on “compelling” or “exceptional” circumstances. The Home Office’s position, however, 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.

Nonetheless, the 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 page of this guide.*

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 are **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 page of this guide.*
- 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 page of this guide.*
- 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 page of this guide.*
- 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 page of this guide.*

- 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 page of this guide*.
- “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 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/>

Making an application

The application form or way to notify the Home Office of human rights grounds will depend on your situation – see section above.

Article 8 family/private life cases, if they are not part of an asylum application, are **generally not eligible for legal aid**. This means you cannot generally get free legal advice and representation for these sorts of applications. It is possible to apply for exceptional legal aid funding, but you will need to show that your human rights would be breached if you do not have access to legal aid.

The **application fee** for human rights applications will depend on what kind of application you are making, if you are in the UK or outside the UK, and how many dependants you are including in the application. There is no fee to raise human rights grounds within an asylum claim. See pages mentioned above for the relevant fees for different types of applications.

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 and/or your dependants 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 dependants' 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 Visas page of this guide.*

ACTION SECTION

The fee waiver form quite be quite difficult to fill out. If you do not have a legal representative, a friends or volunteer 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 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 friends and community could help raise the money for the application fee/health surcharge. Some people have successfully raised immigration fees through online fundraisers.

If your application is successful

If you are successful in your application, the leave to remain you are granted (the length of time you are given permission to stay) will depend on the type of application you have made. See the different pages mentioned above for more information on this.

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 page of this guide.*

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 page of this guide.*

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 page of this guide.*

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.