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September 1, 2023

To: PolicyFeedback@uscis.dhs.gov

Re: Comment to Policy Manual Changes: August 1, 2023: Statelessness (effective Oct. 30, 2023)

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Dear USCIS,

The Immigrant Legal Resource Center (ILRC) submits the following in response to the August 1, 2023 changes to the Policy Manual concerning statelessness.

The ILRC is a national non-profit organization that provides legal trainings, educational materials, and advocacy to advance immigrant rights. The ILRC's mission is to work with and educate immigrants, community organizations, and the legal sector to continue to build a democratic society that values diversity and the rights of all people. Since its inception in 1979, the ILRC has provided technical assistance on hundreds of thousands of immigration law issues, trained thousands of advocates and pro bono attorneys annually on immigration law, distributed thousands of practitioner guides, provided expertise to immigrant-led advocacy efforts across the country, and supported hundreds of immigration legal non-profit organizations in building their capacity.

The ILRC publishes advisories and manuals for legal practitioners in many areas of family and humanitarian immigration law. The ILRC has expertise in several areas of immigration law where stateless individuals are impacted, including asylum, TPS, deferred action, U and T visas, and parole in place.

Through our extensive network with service providers, immigration practitioners and immigration benefits applicants, we have developed a profound understanding of the barriers faced by low-income immigrants seeking immigration benefits. As such, we welcome the opportunity to provide comments the USCIS's recent addition to the Policy Manual defining statelessness. The recommendations that follow are gleaned from the experiences of many low-income immigrants who we and our partners serve.

ILRC Commends USCIS for Positive Changes

ILRC commends USCIS for publishing guidance on the definition and process for determining statelessness, as well as describing its impact on several types of immigration benefits applications. We share USCIS's concern that stateless individuals who reside in the

United States lack access to basic documentation through no fault of their own. We agree with USCIS that while statelessness does not directly result in a particular immigration benefit, it should be considered as a relevant factor in the adjudication of many immigration benefits, including asylum, TPS, deferred action, parole in place, and U and T visas.

We commend USCIS for adopting guidance that will provide for an individualized and case-by-case consideration of documentation, relevant country conditions, and foreign law to determine statelessness. The new guidance provides that an individual can present “any credible evidence” to establish a statelessness claim by preponderance of the evidence. These are the correct standards to establish, especially given that this population often does not have access to regular documentation.

We also agree with USCIS’s guidance that an applicant’s own testimony can be presented as credible evidence. We concur with USCIS’s recognition that while primary documents (birth certificates, marriage certificates, school records, travel documents, residency documents, court or medical records, other official documents) are probative they may be impossible to obtain for stateless persons, thus secondary evidence should also be acceptable. We agree that secondary evidence should include employment or property records, religious records, or affidavits by third parties which corroborate the applicant’s own statement. This flexibility in documentation is needed in order to fairly assess statelessness because the population lacks regular channels to obtain primary documents.

In short, we commend the agency for its efforts in this area and these new policies. However, there are some areas where USCIS can provide further detail and guidance.

Internal Report on Statelessness – Further Detail on Process Needed

The new guidance describes an internal report that an adjudicator can request within USCIS to assist the officer in assessing statelessness and whether it is a relevant factor in a particular adjudication. The guidance lacks any detail on where that internal report is to be prepared or who is responsible, other than stating that specialized resources will be dedicated to this task. The public and applicants would benefit from further detail on where and how these reports are to be prepared as implementation moves forward.

The guidance states that the internal report may not be challenged or appealed, as it is not a final decision on the application for the immigration benefit. We recommend a process where the applicant is provided with a copy of the report and afforded an opportunity to respond through a Request for Evidence prior to a final decision being made on the underlying immigration benefit.

Relevance of Statelessness to Adjudications of Deferred Action, Parole in Place, Asylum and Refugee Status, U and T visas, and TPS

We agree with USCIS’s guidance that “stateless persons are part of a vulnerable population and may encounter unique difficulties while applying for immigration benefits,” and that statelessness should be a favorable factor in the exercise of discretion in the application for immigration benefits, especially deferred action, parole in place, asylum and refugee status, U and T visas, and TPS. The guidance specifies that in these benefits applications, it is appropriate for an adjudicator to request a report on statelessness because it may impact discretion or be useful in determining the identity of an applicant.

However, we recommend that USCIS consider statelessness as a discretionary factor in all discretionary immigration benefits, including waivers, adjustment of status, and parole, among others. Since these benefits are already identified as discretionary by USCIS guidance¹, it seems logical and fair to extend the consideration of statelessness to all discretionary benefits as well as the shorter list identified in the August 1, 2023 additions to the Policy Manual.

The guidance would also be improved if it outlined a regularized process by which a stateless person seeking a particular benefit could present their case. If a particular office of USCIS will be the specialized unit that will issue a statelessness report, applicants should be directed by instructions to file there.

For asylum and refugee status, the guidance recognizes that statelessness is relevant because a stateless person may have difficulty establishing identity, and they may qualify for relief if they can show the qualifying fear of persecution in their place of last habitual residence. The guidance could be improved with further detail on how to determine the place of last habitual residence. For example, the INA defines residence as “place of general abode...principal, actual dwelling place in fact, without regard to intent,” and the guidance could make note of this existing definition.² This definition is also important for TPS because a stateless person who has no nationality can still be eligible for TPS if they last habitually resided in a TPS-designated country.

We agree with USCIS that for U and T visas, adjudicators should recognize that stateless individuals are at increased risk of being trafficked, and thus the fact of statelessness is relevant when analyzing trafficking and identity.

Conclusion

We commend USCIS for publishing the new guidance on statelessness in the Policy Manual. This guidance is a critical first step to addressing the legal problems faced by this vulnerable population.

We urge the agency to adopt some further detail in the guidance to define the process of making an internal report on statelessness more transparent, and to adopt a mechanism to allow the applicant to respond to that report. In addition, the consideration of statelessness as a relevant discretionary factor should be expanded to all discretionary benefit applications.

Sincerely,

Peggy Gleason
Senior Staff Attorney

¹ The Policy Manual lists all the possible applications for benefits to USCIS that are discretionary, I USCIS-PM (e)(8), <https://www.uscis.gov/policy-manual/volume-1-part-e-chapter-8> .

² INA § 101(a)(33).