

## Shorter routes to settlement for long-resident children & young people

The current immigration system is failing young people who have grown up in the UK and have the right to stay and contribute to the country they consider home. There are over 100,000 children and young people who are living without status in the UK today, over half of whom were born here,<sup>1</sup> who face a long, complex and expensive process before they are able to obtain the permanent status needed to plan for their futures and contribute fully to society.

### The current system

In the UK today, a child who is undocumented (has no permission to be in the UK) has, in theory, several different routes by which they might regularise.<sup>2</sup> If they have spent seven years living continuously in the UK, and can prove that it would not be reasonable to expect them to leave, or if they are over 18 and have lived here for half their life, then they should be granted 'leave to remain'. However, the options available to these young people have narrowed in recent years, and the procedures they must follow have become more complicated. It is now harder, costlier, and more onerous for children and young people who have grown up in the UK to regularise their status.<sup>3</sup>

Even if a young person can surmount these obstacles and submit an application, their journey is not yet over. If their application is accepted, an undocumented child or young person usually would be granted just two and a half years' leave, meaning that without further action in just 30 months they would be undocumented again. They are then on a ten-year route to indefinite leave to remain, requiring five applications costing a total of between £8,000 and £10,000 in fees and charges before they will have secure, permanent status.<sup>4</sup>

The Home Office calls this the 'ten year route to settlement', but the system seems designed to avoid young people gaining settlement. The need to repeatedly make detailed and expensive applications increases the likelihood of their falling back into undocumented status, for example if they cannot raise the fees or afford a lawyer. The current system also increases the burden on Home Office administration: requiring consideration of five separate applications when a long-term solution could be provided in one or two is wasteful, inefficient and ineffective. At a time when the Home Office is often criticised for backlogs and delays in processing applications,<sup>5</sup> and faces a huge increase in workload after the UK leaves the EU, more streamlined alternatives should be welcomed.

**A shorter route to permanent status would ensure that children and young people who have grown up and been educated in this country are able to fully integrate both financially and socially, at great benefit both to them and to our society. It would reduce the risk of their falling back out of the system if they are unable to raise the funds for application fees or a lawyer, increasing the undocumented population, and would ease the burden on the Home Office in processing these applications.**

<sup>1</sup> N. Sigona and V. Hughes, No way out, no way in: Irregular migrant children and families in the UK, University of Oxford, 2012

<sup>2</sup> See Coram Children's Legal Centre, Securing Permanent Status: existing legal routes for children and young people without leave to remain in the UK, 2017

<sup>3</sup> Coram Children's Legal Centre, 'This is my home': Securing permanent status for long-term resident children and young people in the UK, 2017 at <https://www.childrenslegalcentre.com/this-is-my-home/>

<sup>4</sup> Coram Children's Legal Centre, The fee barrier: can you afford the place you call home?, 2018

<sup>5</sup> E.g. BBC, 'Home Office visa delays 'inhuman'', 3 October 2017, <http://www.bbc.co.uk/news/uk-england-41096675>

## Discretionary grants of indefinite leave to remain (ILR)

The discretion to grant indefinite leave to remain is contained in Home Office policy, but is rarely used. In 2016 only 25 grants of indefinite leave to remain for children under 18 were granted on a discretionary basis,<sup>6</sup> despite the courts having highlighted that ‘where there is strong evidence to suggest that the child’s life would be adversely affected by the grant of limited leave’, ILR should be granted.<sup>7</sup> There is no discretion once a child turns 18.

## A shorter route to settlement

It is only human rights claims that are on the ten year route to settlement. All other categories of migrant have shorter routes to settlement. For example, as a partner/spouse or as the parent of a British child you will be on a five year route to settlement. The Home Office is currently putting together a process to allow European citizens who have resided lawfully in the UK for five years to apply for settlement. The Government has committed to a system that is ‘simple’ and ‘straightforward’, avoiding any unnecessary administrative burdens, limiting the cost to £65 (or half that figure for children under 16).<sup>8</sup> Home Office guidance states that individuals should ‘serve a probationary period of limited leave before being eligible to apply for ILR’<sup>9</sup> but young people who have grown up in the UK must endure a ‘probationary period’ that is twice as long as other individuals eligible for leave to remain, without any obvious reason.

## Recommendations:

- **Shorten young peoples’ route to settlement.** The government should amend the immigration rules to allow children and young people applying for leave to remain on the basis of long residence and/or their right to a private and family life to be on a five year route to settlement.
- **A one-step process for children and young people.** The government should revise Home Office guidance on discretionary grants of Indefinite Leave to Remain (ILR) so that a child or young person applying for leave on the basis of long residence and/or their right to a private and family life whose future lies in the UK automatically qualifies for consideration for a grant of ILR.

## Case study

Eve came to the UK when she was four and has lived here ever since. Because she came to the UK so young, Eve grew up not knowing that she was undocumented, and assumed she was British like her friends. Eve’s mother tried to regularise the family’s status around the same time that Eve began secondary school, but received poor advice from unregulated solicitors. As a result, the family remained undocumented. As Eve studied for her A levels, she realised that her status would stop her from going to university, and her mental health suffered badly. She nevertheless got good grades, but could not get a student loan because of her immigration status. She had no right to work, and so was unable to pay for a private solicitor to take on her case. Eve was finally assisted by a pro bono solicitor when she was 20 and had been in the UK for 16 years, but she was only granted leave to remain for two and a half years just before her 21<sup>st</sup> birthday. She will not be eligible for settlement until she is 30 and has lived in the UK for 26 years.

<sup>6</sup> Updated statistics were requested from the Home Office via a Freedom of Information request but this was refused.

<sup>7</sup> *SM & Others v Secretary of State for the Home Department* [2013] EWHC 1144

<sup>8</sup> Home Office, EU Settlement Scheme: Statement of Intent, June 2018

<sup>9</sup> Home Office, Leave outside the Immigration Rules, v. 1.0, February 2018