

## Statelessness in the United States

22 August 2017



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## Discussion Topics:

- What is statelessness? Definition and causes of statelessness;
- Statelessness in the United States;
- Representing stateless persons in U.S. asylum proceedings;
- Case example.



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## Stateless Person Definition

*Article 1*

### DEFINITION OF THE TERM "STATELESS PERSON"

1. For the purpose of this Convention, the term "stateless person" means a person who is not considered as a national by any State under the operation of its law.



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### Statelessness in International Law



- Right to Nationality
- Right of the Child to Acquire a Nationality
- Prohibition on Discrimination in Acquisition or Deprivation of Nationality
- 1954 and 1961 Statelessness Conventions



### Causes of Statelessness

- Conflicts in nationality laws
- Discriminatory nationality laws
- Movement from countries of birth
- Emergence of new states and changes in borders
- Loss or deprivation of nationality



### UNHCR's Protection of Stateless People

#### UNHCR Handbook (2014)

3 Sections:

- Part 1: Criteria for Determining Statelessness
- Part 2: Procedures for the Determination of Statelessness
- Part 3: Status of Stateless Persons at the National Level



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### Hardships Facing Stateless People in the U.S.




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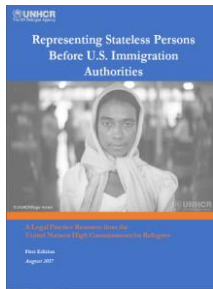
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### Stateless Persons and U.S. Immigration Authorities



#### UNHCR Manual (2017)

3 Chapters:

- **Chapter 1:** Understanding, Identifying and Proving Statelessness
- **Chapter 2:** Avenues for Relief for Stateless Clients
- **Chapter 3:** Alleviating Other Hardships




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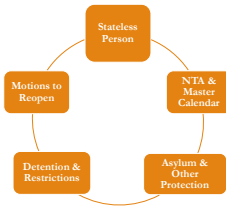
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Stateless Persons and U.S. Immigration Authorities




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### Seeking Asylum while Stateless

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### Roadmap for Discussion



- Statelessness and the Immigration and Nationality Act's definition of refugee
- Statelessness and bars to asylum eligibility
- Practical tips for preparing an asylum application for a stateless applicant
- Other tips and strategies

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## Statelessness and the Definition of Refugee



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## Outside Country of Nationality or Country of Last Habitual Residence



- Where is your client a citizen or national?
- If stateless, where did they last habitually reside?
- What does last habitual residence mean?
  - INA § 101(a)(33); 8 CFR § 214.7(a)(4)(i)
  - Quantitative vs. Qualitative Approach
    - *Ouda v. INS*, 324 F.3d 445, 447 (6th Cir. 2003)
    - *Elian v. Ashcroft*, 370 F.3d 897, 897-901 (9th Cir. 2004)
    - *Paripovic v. Gonzales*, 418 F. 3d 240, 242 (3d Cir. 2005)

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## Harm Rising to the Level of Persecution



- Is statelessness persecution?
  - Per se persecution?
  - Circumstances under which rendered stateless?
  - Effects of statelessness?
- Factors to consider
  - Mental, emotional, psychological harm
  - Severe economic deprivation
  - Discrimination and harassment
  - Cumulative effects
- Case examples:
  - *Šterba v. Holder*, 646 F.3d 964 (6th Cir. 2011)
  - *Haile v. Holder*, 591 F.3d 572 (7th Cir. 2010)

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## Past Persecution vs. Well-Founded Fear



- Past Persecution → presumption of WFF unless
  - Internal relocation or
  - Changed circumstances – *Ouda v. INS*, 324 F.3d 445, 450 (6th Cir. 2003).
- Denaturalization can happen before or after flight
- Individualized harm is not required
  - Pattern and practice
  - Membership in disfavored group
  - Individual risk factors
- Consider statelessness at all stages of an asylum process

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## Nexus and the Five Protected Grounds



- Evidence of Persecutors' Motives
  - Direct – country's nationality laws, interpretations
  - Circumstantial – facially neutral laws, but how they are applied in practice
- Common protected grounds for cases involving statelessness:
  - Race/ethnicity/nationality
    - E.g., *Haile v. Holder*, 591 F.3d 572 (7th Cir. 2010); *Stserba v. Holder*, 646 F.3d 964 (6th Cir. 2011).
  - Religion
    - E.g., *Haile v. Holder*, 591 F.3d 572 (7th Cir. 2010).
  - Political Opinion
    - E.g., *Ahmed v. Kesler*, 504 F.3d 1183 (9th Cir. 2007).
- Beware of PSG claims – avoid circularity!

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## Statelessness and Bars to Asylum Eligibility




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## One-Year Filing Deadline



- Changed Circumstances
  - Identify the changed circumstances
  - Explain why it is material to your client's eligibility for asylum
  - Show your client filed within a reasonable time of the change
    - Delayed awareness
- Extraordinary Circumstances

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## Firm Resettlement



- A distinct question from statelessness
  - Can last habitually reside without having firmly resettled
- Did your client have an offer of permanent residence or citizenship there?
  - Was entry to that country a necessary consequence of flight?
  - What were the conditions of your client's residence there?

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## Preparing an Asylum Application for a Stateless Applicant



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## Completing the Form I-589



- Be careful answering questions about nationality/citizenship
  - Present nationality/citizenship
  - City/country of birth or nationality at birth
  - What country issued your client's last passport?
  - Family members' nationality/citizenship and country of birth
- Protected grounds → there may be more than one
  - Provide descriptions of country's nationality laws/policies and how they are interpreted/applied
  - Provide descriptions of country conditions and patterns and practices related to your client's protected traits

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## Completing the Form I-589



- Description of harm suffered
  - Include all social and economic problems
  - Include all emotional and psychological harm
  - Include all discrimination and harassment
- Description of harm feared
  - Discuss patterns and practices in the country
  - Discuss individualized risk/harm feared
- Time spent in other countries after fleeing
  - Be careful of last habitual residence vs. firm resettlement distinction
- OYFD → focus on when the change occurred and when your client became aware of the change
- Use addendums to provide explanations where necessary

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## Important Supporting Evidence



- Document the reason why your client is stateless
  - Nationality and other laws/policies, how interpreted/applied
- Provide evidence of last habitual residence
  - Length of time, how the time was spent, living conditions
- Document all types of harm and the cumulative effects
  - E.g. witness statements, income/employment vs. budget needed to survive, psychological evaluations, etc.
- Provide country conditions evidence showing patterns and practices against similarly situated people
- Document when laws/policies changed and when/how your client became aware of those changes

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## Important Supporting Evidence



- Expert opinions can be very useful
  - Experts on laws/policies of a country
  - Experts on country conditions and patterns/practices in a country
  - Experts on historical and current targeting of certain groups
- Consider seeking a "statelessness" determination from UNHCR

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## Other Tips and Strategies




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## Defensive Claims



- Master Calendar Hearings and Pleading to the NTA
  - Deny relevant factual allegations
    - E.g., Your client is a "native and citizen of X country"
  - Be ready to articulate why your client is not a citizen of X country and why he/she is stateless
  - BUT, a strategic decision
    - May not want to raise statelessness issue at all
- Decline to designate a country of removal

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## Don't Let Statelessness Confuse You!



- Can be the cause of the harm
- Can also be the harm itself
- When developing your legal theory, always come back to "the big 3":
  - What is the harm your client suffered/fears?
  - Who acted/would act to cause the harm?
  - Why did/would they act in to cause the harm?

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## Identify Statelessness Early



- Make this a part of your intake process
- Early identification is key to:
  - Developing your legal theory
  - Maintaining your client's credibility
  - Increasing exercises of prosecutorial discretion
  - Avoiding lengthy detention or onerous reporting requirements
  - Reviving seemingly "final" cases

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## Case Example

- Martha was born in Country X. Her mother was a member of an ethnic minority group, the Bunta, and her father was a member of the predominant Binta group. When Martha was born, the nationality law of Country X allowed for married women who were of a minority ethnic group but were citizens of Country X to convey nationality to their children, so long as the father was a member of a majority ethnic group. This could be proved through presentation of a birth certificate, which Martha's parents obtained and duly registered. Her parents were married when they had her, and both were citizens of Country X.
- When Martha was 20 years old, fighting broke out in Country X, and the majority Binta government changed the nationality law, prohibiting ethnic minority women from conveying nationality, regardless of the mother's citizenship or the father's ethnic group. Although the law on its face appeared prospective, the government of Country X applied it to anyone regardless of when they were born. When she heard this was happening, Martha rushed to the authorities to request a copy of her birth certificate, but she was told that because her mother was Bunta, that she was not a citizen and was not entitled to any official documentation from the government. They told her to report immediately to the police with her passport that she had been issued years prior.
- Martha, who had heard reports of others in her situation being arrested and some even tortured, decided to flee instead. Using an existing US visitor visa, she traveled to the United States, where she overstayed her visa and her passport expired. In the meantime, the civil war in Country X continues and the crackdown on non-Binta has only intensified. Martha comes to your office to ask what her options are.

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Questions?

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