

DETERMINING NATIONALITY, FORMER HABITUAL RESIDENCE & ARTICLE 1E COUNTRIES

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ANALYSING NATIONALITY

The general rule in asylum law is that a country is expected to be able and willing to protect its citizens or residents. Only when it is not, will 'surrogate' protection be available. Therefore, it is critical to know which countries are in play. A person might (i) have single, dual, or even multiple nationality; (ii) be stateless [Former Habitual Residence], or (iii) have single, dual, or multiple nationality and be living in another country where he or she has the rights and obligations of a national of that country. In the latter case he or she may be excludable under Article 1E. Consequently, it is critical at the outset to establish an applicant's nationality or residency.

ARTICLE 1E

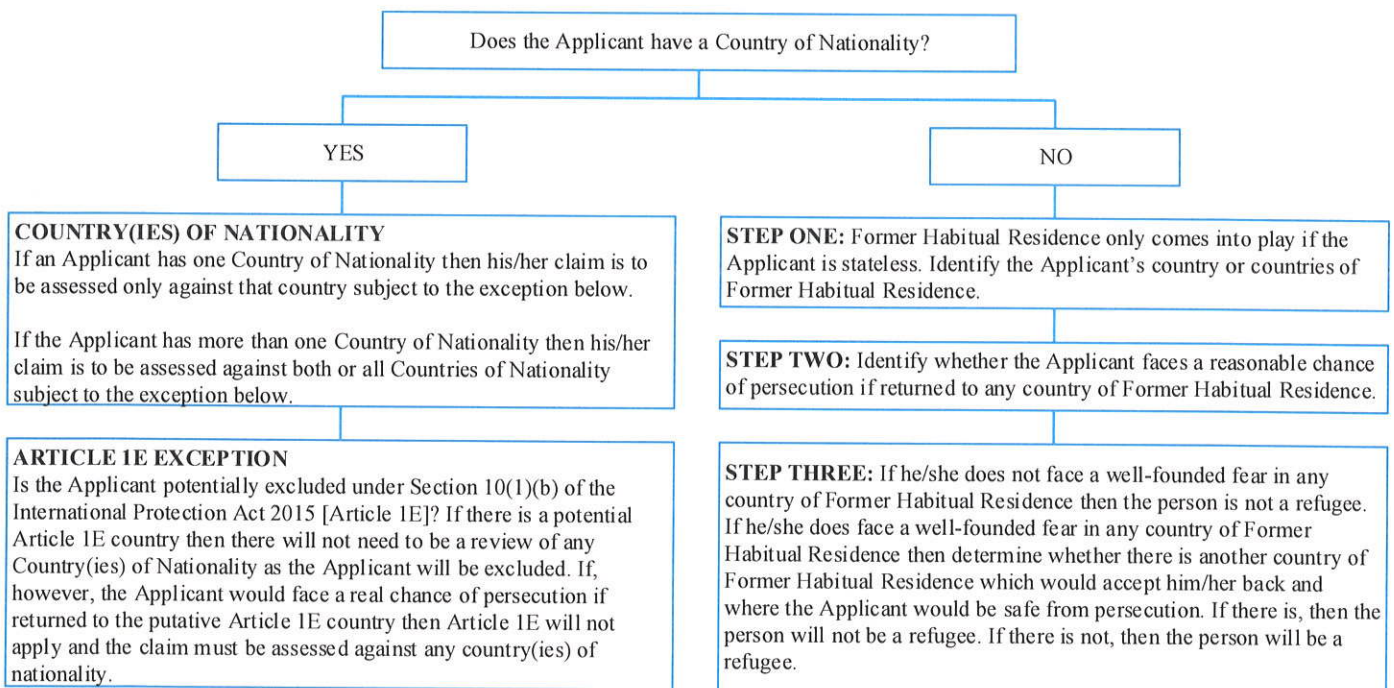
Section 10(1)(b) of the International Protection Act 2015 is based upon Article 1E of the Convention and reads:

A person is excluded under this Act from being a refugee where he or she— is recognised by the competent authorities of the country in which he or she has taken up residence as having the rights and obligations which are attached to the possession of the nationality of that country, or rights and obligations equivalent to those. Irish law does not have a similar provision for subsidiary protection claims.

STATELESSNESS / FORMER HABITUAL RESIDENCE

While an Applicant with multiple nationalities must establish against each of his/her countries of nationality that there is a reasonable chance of persecution if returned, the definition of statelessness does not require a similar analysis with respect to countries of Former Habitual Residence. In these cases, it is sufficient if the Applicant can establish his/her fear of future persecution in any country of Former Habitual Residence as well as establish that no other country of Former Habitual Residence can provide him/her with protection. [See the UNHCR Handbook, paragraphs 104 and 105]. Please note that this issue is before the Supreme Court on appeal from *T (D) v Refugee Appeals Tribunal & Min for Justice (No 2) [2012] IEHC 652 (O'Keefe J.)*

The Chart below provides a method of navigating the issue of nationality, Former Habitual Residence [statelessness] and Article 1E.



Factors to consider when analysing Article 1E

- (1) Nature of the residency rights. The authorities of the putative Article 1E country must recognise the Applicant as having the 'rights and obligations' of a national of their country 'or rights and obligations equivalent to those'.
- (2) Rights and Obligations of a National. The "rights and obligations" generally entail (a) The right to return to the Country of Residence; (b) The right to work freely without restrictions; (c) The right to study; (d) Full access to social services. It is recognized that these rights and obligations will vary from country to country.
- (3) Onus to Renew Status. Once a prima facie case has been established that an Applicant is subject to Article 1E then the onus shifts to the Applicant to demonstrate why he/she cannot return to that country. This can involve renewing status, obtaining travel documents and so on.
- (4) State Protection. Given that one of the 'rights' of nationals is to state protection then if the Applicant faces a 'real chance' of facing persecution upon return, then the country will not be an Article 1E country and the assessment will be carried out against any country(ies) of nationality.