

8.5 ELIGIBILITY STATUS & RISK ASSESSMENT

The table below outlines the different categories of immigration status alongside the opportunities and risks to universities in providing support to different migrant groups. The highlighted categories include those covered by the current Article 26 eligibility criteria. The other categories of immigration status have been included in order to support individual universities to make an informed choice regarding which categories to incorporate into their own eligibility criteria. Following on from the table are details of the rationale behind the Article 26 status eligibility criteria and some further points to be considered by universities when defining this element of their own criteria.

Status	Description	Opportunities	Risks
Limited leave to remain (previously referred to as discretionary leave to remain – DLR)	Temporary status awarded as the result of a claim for asylum but outside of the immigration rules. See Chapter 3 status and support for further information.	An award of limited leave to remain is usually for 2.5 years (previously it was for 3 years), resubmission often leads to a further award of 2.5 years, at which point an application can be submitted for permanent stay in the UK. Check when leave was awarded i.e. if it is the first or second award and the student applied for the first award before July 2012, as the student could be on the cusp of receiving permanent stay and therefore in the near future be entitled to student finance.	Low
Limited leave or DLR – non asylum	Temporary status awarded as the result of a migrant applying to regularise their stay / right to remain in the UK..	Periods of leave and their relevance change, it is important to check the most up to date information.	Low
Limited leave or DLR – application for extension pending	An award of limited leave has ended and an application for an extension (further award) has been submitted.	As above BUT application could be based upon application for an extension from UASC post age 17.5. If their application is pending, there is a risk that it will be refused.	Low/med

Asylum seeker	Awaiting a decision on an initial claim or in the process of appealing a decision on a claim for asylum. See Chapter 3 status and support for further information.	Decisions on applications for asylum and the appeals process can take years in some instances (although there is no guarantee, as the Government is constantly trying to speed up the process). Once an asylum seekers' appeal rights are exhausted on their initial or first claim for asylum, if they have fresh evidence they might be in a position to then submit a fresh claim for asylum. See Chapter 4 , section 4.4 Appeal Rights Exhausted.	Low/med
Asylum seeker – ARE + fresh claim	Appeal rights exhausted on first / initial claim for asylum and a fresh claim for asylum has been submitted. See section 3.1.3 and section 4.4 for further information.	Fresh claims can sometimes take a long time to be processed; however they can also be dealt with very quickly, especially given that the claimant has already been refused. It can depend upon the strength of the fresh evidence that they have submitted.	Med/high Need to consider – i) How many fresh claims have been submitted? ii) How many years have they been in the UK? iii) Is the claim based on Article 8 'right to private life'?
Asylum seeker – ARE + no fresh claim	Appeal rights exhausted on first / initial claim for asylum and NO fresh claim for asylum has been submitted. No active claim for asylum. Uncertain as to the basis upon which they can remain in the UK. Liable to be detained See Chapter 5 , section 5.1 for full details on removal, return & detention.	Current Article 26 students have spent periods of time in this position, when they have effectively been 'in between' claims for asylum. Article 26 has never accepted a new student who cannot evidence an active claim for asylum.	High A student might be in the process of preparing fresh evidence to support a fresh submission. However, it could be difficult to ascertain an exact timeframe. The student could be viewed as being unlawfully in the UK – Home Office could apply Tier 4 rules to the university, despite there being no legal basis for them to do so. See Appendix 8.7 .

<p>Refugee status / HP (humanitarian protection)</p>	<p>Entitled to student finance prior to degree commencing and if Refugee Status or HP is awarded during degree programme.</p> <p>See Chapter 4, section 4.1 for impact of a positive change to status during a student's degree programme.</p>		<p>None</p>
<p>Undocumented migrants</p>	<p>Migrants might have lived in the UK for decades and managed to achieve the qualifications required for a degree programme.</p> <p>Many different motivations / reasons / circumstances through which people have arrived and live in the UK.</p> <p>They are likely to be unlawfully in the UK and therefore have no entitlement to mainstream benefits, Home Office support or student finance.</p>	<p>Likely to lack documentation.</p>	<p>High Tier 4 rules might be applied.</p> <p>See Appendix 8.7.</p>