

EEA/EU Staff Immigration Advice Seminars

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Implications of Brexit - Short Term (within 2 years)

- ▶ Government have confirmed intention to invoke Article 50 and leave the EU, in light of referendum result.
- ▶ Legal uncertainty over whether the Prime Minister has the authority to invoke Art 50 without a parliamentary vote - subject of current legal proceedings.
- ▶ Theresa May has confirmed that current intention is that Article 50 will be invoked by end of March 2017.
- ▶ It would be a breach of EU rules for the UK to change migration rules for EU, EEA and Swiss Citizens whilst the UK remains a member of the EU

Implications of Brexit - short term impact

- ▶ UK remains a member of the EU once Article 50 invoked. This is a 2 year process, extendable by UK-EU agreement.
- ▶ Very small chance of UK breaking the Treaty of the EU before exit through article 50 process
- ▶ Although introduction of new rules for EU migrants would break Treaty rules, would receive support from certain camps. Still unlikely to occur
- ▶ More likely is that UK practice towards consideration of applications could change. Referendum result is likely to mean that all but those with the clearest strong applications made will be rejected

Implications of Brexit - Medium term (2 years on)

Three potential outcomes:

- ▶ UK withdraws Art. 50 and remains member of EU
- ▶ 2 year period concludes without agreement for extension - 'forced Brexit' without legal rules on transition or future relationship in place
- ▶ Agreement reached within 2 years or extended period - new agreements in place concerning transitional or future arrangements

The last outcome could include UK remaining part of EEA in which case free movement rules may not be impacted.

Implications of Brexit Medium Term (2 years on)

- ▶ Government have discussed replacing current system with a Points Based System - could impose PBS requirements on certain EEA nationals or family members with potentially harsh consequences
- ▶ Certain groups are more vulnerable, such as those who have not acquired a permanent right of residence, those with a 'derivative right of residence' or EEA family members.
- ▶ Tier 3 under PBS Scheme has never been opened up previously - however may be introduced to enable larger numbers of low-skilled workers to come to the UK

Current Rules - Status of EEA Nationals

- ▶ EEA Nationals have the right to freedom of movement within the EEA
- ▶ In order to benefit from this right, must be a 'qualified person' which generally means being involved in some form of economic activity
- ▶ Qualified persons consist of those who are workers, self-employed, job-seekers, students or self-sufficient persons. EEA nationals can obtain a **Registration Certificate** to evidence this right.
- ▶ If a person has been present in the UK as a qualified person for a continuous period of 5 years, then they acquire a right of permanent residence. Can obtain a **Document Certifying Permanent Residence**.
- ▶ After having held permanent residence for one year, can naturalise as a British citizen (though this could impact upon family members dependent on the EEA national's status). Will be issued a **Naturalisation Certificate**.

Qualified Status - Worker

- ▶ Most common form of 'qualified' status is as a worker:
 - a) Work must be 'genuine and effective'
 - b) Would struggle if less than 20 hours work per week
 - c) If self-employed, provide thorough documents establishing self-employment
 - c) Entitled to claim public funds
 - d) Includes those who have taken maternity leave for a reasonable period after birth (and up to 11 week before birth)

Qualified Status - Self Sufficient

- ▶ 'Sufficient resources not to become a burden on the social assistance system of the UK'
- ▶ Comprehensive Sickness Insurance
- ▶ If don't qualify for social assistance under benefit system due to level of resources (savings of £16k plus) - accepted have 'sufficient resources'
- ▶ Otherwise, will need to provide more evidence of having sufficient resources e.g. budget
- ▶ If have family members, need to have sufficient resources for all family members, and all family members need comprehensive sickness insurance

Qualified Status - Student

- ▶ Enrolled for principal purpose of following a course of study;
- ▶ Has comprehensive sickness insurance;
- ▶ Is self-sufficient (this can be evidenced through documentation or through a 'declaration' from the student)

Qualified Status - Job Seeker

- ▶ A person can remain in the UK if seeking work
- ▶ Position is stronger if they have been employed for one year as a qualified person previously (otherwise usually can only be a jobseeker for up to six months)
- ▶ Normally must be registered as a jobseeker with the relevant employment office
- ▶ Must have a genuine chance of being engaged

Registration Certificate - Application

- ▶ Application is made on form EEA (QP)
- ▶ Home Office Fee of £65
- ▶ Must be decided 'immediately on application' - in reality may take longer at present time
- ▶ Can apply in person at Croydon - <https://www.gov.uk/ukvi-premium-service-centres/eligibility>
- ▶ Online application now available - <https://visas-immigration.service.gov.uk/product/eea-qp>

Right of Permanent Residence

- ▶ Acquired after being a qualified person for a ‘continuous’ period of 5 years
- ▶ Continuity is broken where a person is absent from the UK for more than 6 months in a single year; although
 - a) Person may be absent in connection with military service; and
 - b) A single absence not exceeding 12 months for important reasons such as pregnancy and childbirth, serious illness, study or vocational training or an overseas posting is permitted.
- ▶ Once acquired, permanent residence is only lost through an absence from the UK of two years or exclusion on public policy grounds
- ▶ Permanent Residence is an EU right - however transitional provisions are very likely to enable those who are able to evidence a right of permanent residence to remain in the UK equivalent to those granted ILR under the Immigration Rules

Document Certifying Permanent Residence - Application

- ▶ EEA (PR) Form is used - long form, but only certain sections need to be completed depending on your circumstances
- ▶ Home Office Fee is £65
- ▶ Need to evidence qualified status covering the ENTIRE 5 year period - NO GAPS!
- ▶ Must also provide full travel history during relevant period
- ▶ Must be decided 'as soon as possible' and 'within 6 months' - in current climate, likely to be delays (recommend making application sooner rather than later)
- ▶ If have not acquired permanent residence yet, then given the period of time it is likely to take before UK formally leaves EU, may acquire permanent residence later. Ensure keep good ongoing records of qualified status (eg wageslips) and good records of travel
- ▶ Online application now available (for EEA national sole applicants only) - <https://visas-immigration.service.gov.uk/product/eea-pr>

British Citizenship Applications

- ▶ Once an EEA national has acquired a permanent right of residence and held it for one year, they can apply for Citizenship (immediately if the EEA national is Irish or married to a British citizen)
- ▶ From November 2015 it is a legal requirement to FIRST apply for a permanent residence card, before applying for citizenship
- ▶ Will need to complete the Life in the UK Test and (where not a national of a majority English speaking country) an English Language Requirement
- ▶ There are residence requirements
- ▶ Good Character Requirements
- ▶ Form AN - Home Office Fee of £1,236.00. Processing time - usually 2 - 3 months but now likely to be delayed.
- ▶ Beware! Family members may lose the right to remain in the UK if the EEA national becomes a British citizen

Family Members

- ▶ Have a right to reside under the EEA Regulations where they are related to a qualified person in the following ways:
 - a) Spouse or civil partner
 - b) Direct descendents of them or their spouse/civil partner who are under 21 or who are financially dependent
 - c) Direct relatives in the ascending line of them or their spouse/civil partner who are dependent
- ▶ EEA national students can only pass on a right to remain under the EEA regulations to their spouses/civil partners and children (unless they are qualified under another status within the regulations)
- ▶ Family Members acquire a right of permanent residence once they have been in the UK for a continuous period of 5 years as the family member of a qualified person or the family member of an EEA national with a right of permanent residence

Extended Family Members

Certain groups can be treated as family members under the regulations:

- a) Relatives of EEA national or their spouse/civil partner who were dependent upon the EEA national abroad or living as part of their household abroad and wishes to join the EEA national in the UK;
- b) Relative of EEA national or spouse/civil partner who on 'serious health grounds' require the care of the EEA national/partner.
- c) Relatives of EEA nationals who would meet the 'adult dependent' immigration rules test (high threshold)
- d) Those who are not married to the EEA national but in a 'durable relationship' - defined as two years co-habitation in a relationship akin to marriage by Home Office, but potential to argue for shorter relationships

Family Member Applications

- ▶ Family Members - Form EEA (FM) - HO £65 Fee - Must be decided within 6 months
- ▶ Extended Family Members - Form EEA (EFM) - HO £65 Fee - Must be decided within 6 months
- ▶ After receiving application, Home Office will initially issue a certificate confirming whether the Family Member has a right to work whilst application is being decided
- ▶ If successful, will issue a **residence card** valid for 5 years. Only provides a right to remain in UK whilst Family Member continues to satisfy the requirements of the Regulations
- ▶ Family Members apply on form EEA (PR) for a **permanent residence card** - HO £65 Fee.

EEA Passport Return Service

- ▶ Available from the 1st October 2016
- ▶ Allow EEA applicants to keep their original passport and ID card
- ▶ The Council House
Old Market Square
Nottingham
NG1 2DT
Phone: 0115 841 5554

Email: office.register@nottinghamcity.gov.uk

- ▶ £10 Fee - no Legal Advice provided.

Tips

- ▶ If applying, apply as soon as possible. Could secure a better status then if application is delayed.
- ▶ Use the most recent version of form on UKVI website - will avoid delays
- ▶ Better to put in too much documentation then too little (as long as it is consistent!) Home Office may become much stricter in the way they apply the regulations so be thorough
- ▶ Ensure you send an original valid passport or valid national ID for the EEA national (copies will not suffice). Send original marriage certificates/birth certificates where relevant.
- ▶ Although EEA (PR) form asks for full travel history, you may want to limit this to the relevant 5 year qualifying period and afterwards
- ▶ If you are qualified under more than one category, then evidence this. If Home Office do not accept you meet the rules in one category, they may accept it in the other. (For example you may argue you were a 'student' but also a 'worker' if you had a part time job)
- ▶ Refer to the EEA (QP) and EEA (PR) guidance notes which details the documents the Home Office expect to see
- ▶ If any uncertainty over whether you meet the requirements, seek advice

Other Options

- ▶ The EEA Regulations contain a number of other provisions. For example a partner of an EEA national may ‘retain’ a right of residence if they separate. Seek specialist advice for further details of whether you may qualify under an alternative provision.
- ▶ Certain persons have a ‘derivative right of residence’, which stem from rights outside of the freedom of movement directive. Those with such rights are particularly vulnerable and should look at alternative grounds to remain in the UK.
- ▶ Applications under the Immigration Rules. For example as a spouse or on the basis of having children in the UK or under the Points Based System

What steps should EEA nationals and their family members take?

- ▶ Common with others, our recommendation is that EEA nationals and Family Members take immediate steps to strengthen their position in the UK given the uncertainty that exists over the future status of these persons.
- ▶ This means applying for the strongest form of status that you are eligible for (i.e. Registration certificate, Permanent Residence, Nationality)
- ▶ Primary concern is that these steps will get harder to take in future, and it may be that Applicants lose the right to apply for certain documents if steps are taken after a certain date

Follow Up

- ▶ Paragon Law can provide a comprehensive service. Initial appointments £60:
Contact Mark Lilley-Tams at markl@paragonlaw.co.uk or call the office on 0115 9644 123.

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Any Questions?

