

What Can You Tell Your EEA Staff in the UK?

Many of our clients are being approached by valued but anxious EEA staff in the UK seeking reassurance about what the Brexit vote means for them. As rights of free movement are likely to be a key lever in any exit negotiations, a definitive, agreed position may not be reached (if at all) until at or close to the end of the UK's two-year exit window.

Continued uncertainty relating to Brexit will inevitably lead to second thoughts among your EEA staff about whether their own best interests are served by remaining in the UK at this very difficult time. In the hope that they can answer your staff's most immediate questions on this score, here are our thoughts on the current position:

- If your EEA staff have been in the UK for five continuous years in a qualifying status (e.g. as a student, worker or self-sufficient or self-employed person), then they will have acquired permanent residence. This means that they have the right to live and work permanently in the UK regardless of whether they continue to reside here in a qualifying status. (Note, however, that any time spent as a self-sufficient person or as a student also requires the individual to have held comprehensive sickness insurance during that period.)
- EEA staff are not required to apply for a document certifying permanent residence in order to acquire that status, but for practical purposes they can and should do so as proof of it. It is also a sensible precaution if they are not sure whether they have acquired permanent residence (for example, where there have been gaps in their UK residence or qualifying status). Non-EEA national family members of EEA nationals in a qualifying status will also acquire permanent residence after five years' continuous residence and can apply for a permanent residence card at the same time as their family member or separately.
- The application process is lengthy. The relevant regulations provide for it to be processed within a full six months. The inevitable spike in applications over coming months is likely to tax that six-month commitment severely. There is no fast-track service available although a simplified online application can be used in some cases.

- Be aware that the UK Visas & Immigration (UKVI) [application form](#) runs to some 85 pages. This is less daunting than it sounds, although the questions asked are quite intrusive, the requirements for accompanying evidence can be onerous and a failure to complete it accurately may require the process to be restarted.
- Absences from the UK or gaps in employment of up to six months in any 12-month period do not necessarily disqualify a person from acquiring permanent residence (in certain circumstances, including maternity leave, longer gaps are also acceptable). Further advice should be sought where your employee's work history or residence in the UK has material gaps.
- It is mandatory for an EEA national to submit their original passport or national identity card as part of the application. It is possible to request that these be returned before the application is approved, but there is no guaranteed time frame for their return and applicants should plan to be without their documentation for many weeks (unless the applicant is eligible to use the online form, in which case UKVI offers an immediate ["passport-return" service](#) in conjunction with local authorities and certain premium service centres).



- EEA nationals who have held permanent residence for one year can apply to naturalise as a British citizen. This carries separate qualifying criteria, including stricter continuous residence requirements. Applicants are now required to have first been issued with a document certifying their permanent residence, but they may be able to apply immediately after that document has been issued if they have already be in the UK for a continuous six-year period. They should check first whether their home country will allow dual nationality – some do, but others do not, and acquiring British citizenship could, therefore, cause them to forfeit their nationality of origin. The acquisition of British nationality by an EEA national may also affect the position of any non-EEA dependent family members, so advice should be sought in this regard also.
- There is no current steer on the position of EEA nationals and their family members who have lawfully been in the UK for less than five years. However, it is in our view inevitable that post-Brexit a way will be found to regularise their status (perhaps through the creation of a new immigration category) so that they may lawfully remain resident and working in the UK, as now. In the meantime, employees in this position can apply for a residence card confirming that they currently hold qualifying status in the UK.
- A fear that EEA nationals may, at some point in the future, have a more restricted immigration status is understandable, but nonetheless still no more than speculation. It will not, therefore, be a lawful basis for preferring a UK national over a better-qualified EEA candidate.
- Since the Brexit vote, we have been working with a number of clients to run group meetings for their EEA staff to address their immediate concerns and/or set up an immigration helpline to deal with any follow-up queries. Please contact one of our Business Immigration partners listed below if this of interest or if you have any other queries about the immigration consequences of Brexit. We can tailor the meetings to meet your own needs, there is no limit on the number of staff who can attend and we can offer a competitive fixed fee to cover the cost.

Please also check out our Brexit Legal blog:

www.brexitlegal.com

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