

Mobility: Immigration alert

January 2024



United Kingdom

Home Office issues new guidance regarding late EU Settled Status applications from permanent residence card holders

Executive summary

On 16 January 2024, the Home Office published new guidance to caseworkers confirming that nationals of EEA Member States and Switzerland (impacted applicants) with permanent residence cards who were late in filing their application for EU Settled Status on the grounds that they were unaware of the requirement to switch their existing status under the EU Settlement Scheme (EUSS), now have “reasonable grounds” for the delay in making their applications.

Background

Under the UK’s Brexit withdrawal agreement with the EU, impacted applicants who were residing in the UK prior to 31 December 2020 had to apply to the EUSS to continue their legal residence in the UK after Brexit. The deadline for the application was 30 June 2021. Applications filed after this date were considered to be late, and late applicants were required to show “reasonable grounds” for why they could not apply by the deadline. If the Home Office did not consider the grounds to be reasonable, applications were rejected.

In August 2023, the new rules removed the “lack of awareness” (of the requirement to switch to the EUSS) as a “reasonable ground” for late applications. The decision affected many impacted applicants who applied for permanent residence cards after the Brexit referendum in 2016 and could not evidence their right to remain in the UK, as the cards were not accepted as evidence of the right to lawful permanent residence in the UK.

Key developments

The UK Home Office recently reversed the rule made in August 2023 that barred impacted applicants holding permanent residence cards from filing late applications to switch to the EUSS on the grounds that they were unaware of the requirement to switch. The new guidance recommends that caseworkers must consider all evidence provided, on the balance of probabilities that the applicant has reasonable grounds for the delay in filing their application.

Impact on Employers

The new guidance represents a significant U-turn on the rights of impacted applicants who were in the UK before Brexit, and hold permanent residence documents. Organizations that employ impacted individuals will be positively impacted, as these individuals will gain further evidence of their right to reside permanently in the UK.

Key steps

EY will continue to monitor these developments. Should you have any questions, we encourage you to contact one of our immigration professionals.

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ED None

ey.com

Seema Farazi
Partner - Global Immigration
+ 44 207 951 7122
seema.farazi@uk.ey.com

Kellie Sullivan
Director - Global Immigration
+ 44 207 806 9707
kellie.sullivan1@uk.ey.com

Nikita Potdar
Director - Global Immigration
+44 20 7760 8208
nikita.potdar@uk.ey.com

Martin Maddocks
Senior Manager Global Immigration
+ 44 207 806 9078
martin.maddocks@uk.ey.com

Charlotte Hall
Senior Manager - Global Immigration
+44 20 7951 4353
chall@uk.ey.com

Lisa Amos
Partner - Global Immigration
+ 44 778 715 1456
lisa.amos@uk.ey.com

Vicky Cregan
Director - Global Immigration
+44 20 7951 1897
vcregan@uk.ey.com

Charlotte Nicolas
Senior Manager - Global Immigration
+ 44 207 197 5228
charlotte.nicolas@uk.ey.com

Jodie Rogerson
Senior Manager - Global Immigration
+44 20 7951 8136
jodie.rogerson@uk.ey.com

Gowshi Ganeshalingam
Senior Manager - Global Immigration
+44 20 7951 7735
gganeshalingam@uk.ey.com