



the3million
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Bristol BS1 2HG

By email:

Minister for Immigration - Robert Jenrick MP
Minister of State for Media, Data and Digital Infrastructure - Julia Lopez MP

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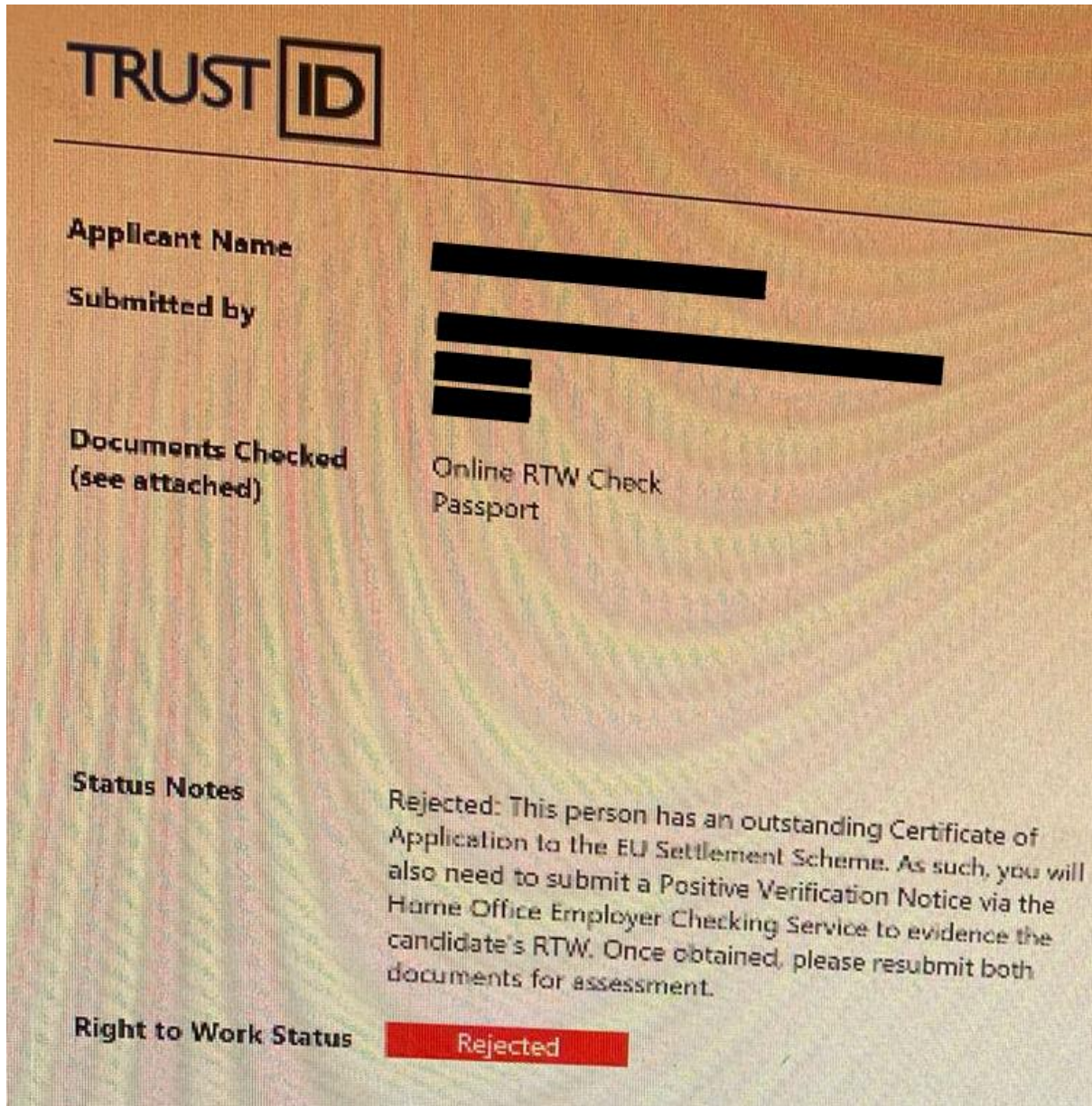
Lords Minister at the Home Office - Lord Murray of Blidworth
UK Accreditation Service (UKAS) at customerfeedback@ukas.com
TrustID at enquiries@trustid.co.uk
Home Office SUG team
Intelligence Team, Independent Monitoring Authority

7 December 2022

Dear Robert Jenrick MP and Julia Lopez MP,

TrustID Digital Identity Services - rights of people with pending late / joining family member applications to the EU Settlement Scheme

We have received several reports of people who have been denied employment or who have lost employment due to the TrustID platform incorrectly marking the Right to Work Status of someone with a digital Certificate of Application [CoA] who needed a positive verification code from the ECS as 'REJECTED', displayed in a prominent red square. We supply a redacted screenshot of one of these cases.



TRUST ID

Applicant Name [Redacted]

Submitted by [Redacted]

Documents Checked (see attached) Online RTW Check
Passport

Status Notes Rejected: This person has an outstanding Certificate of Application to the EU Settlement Scheme. As such, you will also need to submit a Positive Verification Notice via the Home Office Employer Checking Service to evidence the candidate's RTW. Once obtained, please resubmit both documents for assessment.

Right to Work Status Rejected

As you will be aware, people who have a Certificate of Application (CoA) evidencing a valid application to the EU Settlement Scheme (EUSS) have their rights under the Withdrawal Agreement protected while their application is determined. This was announced by the UK Government on 6 August 2021¹.

¹ <https://www.gov.uk/government/news/temporary-protection-for-more-applicants-to-the-settlement-scheme>

Whereas domestic legislation was created to protect the rights pending application of those who were resident in the UK before 31 December 2020 and made an application before 30 June 2021², no such legislation was created for those who made late applications, or for joining family members who made in-time or late applications.

We, along with 8 other organisations, previously wrote to the Home Office³ about this and urged the UK Government to review and update its policies relating to all pending EUSS applications. The Home Office stated in its reply: *“Other in-time applicants and late applicants do not benefit from the 2020 Regulations, and we have no plans to amend them. Instead, we are treating such applicants as having temporary protection once they make a valid application under the EUSS by virtue of the direct effect of the Agreements.”*

As the Home Office letter also explains, by exception, the Right to Work and Right to Rent regulations⁴ have been changed, to allow those who have made a valid application to the EUSS from 1 July 2021 to rely on their certificate of application as proof of their right to work or rent when verified by the Home Office checking services.

the3million’s position has long been⁵ that the mandatory use of the Home Office checking services means that EU citizens are unlikely to be able to enjoy equal treatment rights when it comes to applying for a job or rental accommodation. As we wrote in a letter in March 2021 about people whose prospective employer has to use the Employer Checking Service [ECS]: *“We are aware that the guidance says that an employer needs instead to contact the Employer Checking Service to establish a statutory excuse. This added complexity may be acceptable for a large employer who has already decided that they want to employ this particular individual, however this is highly problematic for small employers or where there is high competition for a short term jobs such as in the gig economy (recent research by the Department for Business, Energy and Industrial Strategy estimated that over 4%, or almost 3 million people, had worked in the gig economy in the preceding 12 months).”*

We equally wrote that the use of the Landlord Checking Service [LCS] would likely be a deterrent to small private landlords.

Neither of the Home Office codes of practice on “Avoiding discrimination while preventing illegal working”⁶ for employers and “Avoiding discrimination while conducting right to rent checks”⁷ for landlords stress that the mandated use of the ECS / LCS respectively must not result in discrimination of the individual.

² Via the Citizens’ Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020 - <https://www.legislation.gov.uk/uksi/2020/1209/contents/made>

³ Our letter and the Home Office reply available at <https://the3million.org.uk/publication/2022060801>

⁴ <https://www.legislation.gov.uk/uksi/2022/242/contents/made>

⁵ See question 2 of our letter of 31 March 2021, before share codes could be generated from Certificates of Application - <https://the3million.org.uk/publication/2021033101>

⁶ <https://www.gov.uk/government/publications/right-to-work-checks-code-of-practice-on-avoiding-discrimination>

⁷ <https://www.gov.uk/government/publications/right-to-rent-landlords-code-of-practice>

In this context we write to you with serious concerns about “TrustID Digital Identity Services”⁸.

TrustID is an Identity Service Provider (IDSP), providing software to perform online right to work and right to rent checks, for both British / Irish citizens using Identity Document Validation Technology (IDVT) and for non-British/Irish citizens through the use of share codes.

We note that Digital Identity Service Providers (IDSPs) require certification from UK Accreditation Service (UKAS) in line with the “UK Digital Identity and Attributes Trust Framework”⁹

TrustID announced on 15 June 2022¹⁰ that they are a “*certified digital identity service provider (IDSP) for Right to Work (RtW), Right to Rent (RtR) and Disclosure and Barring Service (DBS) checks under the UK Digital Identity & Attributes Trust Framework.*” and that they are “*one of the first IDSPs to receive certification following a rigorous audit process undertaken by the Digital Identity Systems Certification service authorised by DCMS and UKAS.*”

We would like to ask the following questions of DCMS and the Home Office:

- Q1. Requiring a positive verification notice (PVN) from the ECS or LCS puts an individual at a significant disadvantage to those who do not. Article 18(3) of the Withdrawal Agreement requires that all rights provided for by Part II of the Withdrawal Agreement apply to anyone with a pending application to the EU Settlement Scheme, including therefore the rights to Equal Treatment (Article 23), and the right not to be discriminated against on grounds of nationality as regards employment (Article 24(1)(a)).
- a. How does the Home Office justify requiring a PVN from the ECS or LCS for those who have a pending application to the EU Settlement Scheme?
 - b. Will the Home Office review this policy such that anyone with a Certificate of Application can produce a share code which is immediately accepted as granting the right to work and the right to rent without requiring any further interaction between the employer or landlord with the Home Office?
- Q2. If the Home Office will not review its policy on requiring a PVN for those with pending applications to the EU Settlement Scheme, will the Home Office review the Codes of Practice “Avoiding discrimination while preventing illegal working” for employers and “Avoiding discrimination while conducting right to rent checks” for landlords to make it clear to employers and landlords that not engaging with the ECS or LCS is discriminatory?
- Q3. If the Home Office will not review its policy on requiring a PVN for those with pending applications to the EU Settlement Scheme, will the Home Office and DCMS review the UK Digital Identity & Attributes Trust Framework to ensure that any IDSP that includes checking

⁸ <https://www.trustid.co.uk/>

⁹ <https://www.gov.uk/government/publications/digital-identity-document-validation-technology-idvt>

¹⁰ <https://www.trustid.co.uk/trustid-digital-identity-services-approved-by-uk-government/>



of share codes handles the rights of those who are referred to the ECS or the LCS appropriately?

Q4. Will the Home Office and DCMS review the certification of TrustID in particular, to examine whether the checking of share codes that require positive verification notices from the ECS or LCS was included in the certification process?

Q5. Will the Home Office and DCMS engage with TrustID as a matter of urgency to require an immediate change to their software such that someone who is referred to the ECS or LCS is not flagged as 'REJECTED' for their Right to Work / Rent Status?

Q6. Will the Home Office or DCMS provide compensation to individuals who have been incorrectly denied employment / accommodation specifically on the basis of having a rejected right to work / rent status displayed by TrustID or any other verified IDSP?

Kind regards,

Monique Hawkins
Policy and Research Officer, the3million

Celia Gardiner
IRMO - Indoamerican Refugee and Migrant Organisation