

From: Luke Piper, Head of Policy and Advocacy, the3million
To: Home Office SUG team
Subject: **Non-EEA with non-BRC perm residence but currently outside the UK**
Sent: 27 April 2022

There are non-EEA nationals abroad who have acquired permanent residence via EEA regulations in the UK previously. We are aware of those who have evidence of their permanent residence in the UK. Some have stamps/paperwork others have BRC. There are of course those who do not have documents.

At present, I am aware how family members can apply to join their family members in the UK, but for those non-EEA nationals with permanent residence their entry to the UK is not conditional on their having a relationship with EEA nationals in the scope of the Withdrawal Agreement and EUSS. They have permanent residence in their own right.

The difficulty is I am not clear on the application procedure these people should follow.

I am aware that those with a BRC can use the app, but what is the position for those with paper evidence of permanent residence or other evidence?

I can't see how some non-EEA citizen can apply abroad via the online system but not others.

Please do let me know if there is anything that needs clarifying here and I look forward to hearing from you.

From: Home Office SUG team
To: Luke Piper
Subject: **Non-EEA with non-BRC perm residence but currently outside the UK**
Sent: 1 July 2022

Thank you for your query regarding non-EEA citizens outside the UK who acquired (and have not since lost, including in terms of the five-year absence permitted under the Withdrawal Agreement) the right of permanent residence in the UK in accordance with the EEA Regulations and the EU Settlement Scheme (EUSS) application process for those who do not have a valid Biometric Residence Card (BRC) as evidence of that.

We made a decision early in the development of the EUSS to allow certain applications to be made directly to the EUSS from outside the UK. The Withdrawal Agreement does not require the UK to make provision for overseas applications for residence status, but we decided to do so under the EUSS where reasonably practicable.

For an EUSS application made from outside the UK, the applicant must provide the 'required proof of entitlement to apply from outside the UK' as defined in Annex 1 to Appendix EU. For a non-EEA citizen who does not already hold status under the EUSS, this is a valid BRC issued by the UK under the EEA Regulations on the basis of an application made on or after 6 April 2015, unless we agree to accept alternative evidence of entitlement to apply from outside the UK where the applicant is unable to produce the required document due to circumstances beyond their control or to compelling practical or compassionate reasons.

Where an applicant does not have a valid BRC, but instead has other Home Office documentary evidence of their permanent residence status (or is applying on the basis of a declaratory right of permanent residence), they should, where they are eligible on the basis of a continuing family relationship with their relevant EEA citizen, or as a person who has retained the right of residence, apply for an EUSS family permit to facilitate their return to the UK and they can then make their EUSS application here. The EUSS family permit route is available to them, notwithstanding that their eligibility for the EUSS is no longer conditional on them having a continuing family relationship with a relevant EEA citizen or retained rights.

Where the individual is not eligible for an EUSS family permit, we are considering how best to facilitate their return to the UK where they can make their EUSS application and will be happy to update you further when we are able to do so.

Policy Lead - EU Settlement Scheme
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