

By email:

Minister Kevin Foster MP

Copied: Home Office SUG team

15 April 2022

Dear Kevin Foster MP,

Travel restrictions for individuals with pending status under the EU Settlement Scheme (EUSS)

As you will be aware, people wishing to apply for status under the EU Settlement Scheme are facing very long delays both in being granted EUSS Family Permits, and in being granted EUSS status.

These delays have a serious impact on their ability to live their life, and in particular on their right to travel abroad and return to the UK (if they are currently living in the UK), or to travel to the UK in the first place (if they are applying from outside the UK).

From the following guidance documents provided on the GOV.UK website, it would appear that the only people with pending EU Settlement Scheme status who can travel to, and enter, the UK are people from the EU, EEA or Switzerland who have been issued with a Certificate of Application and who can demonstrate that they were living in the UK by 31 December 2020:

- [Entering the UK under the EU Settlement Scheme and EU Settlement Scheme family permit](#) (travel guidance')
- [EEA nationals at the border post grace period](#) ('border guidance')
- [Document checks and charges for carriers](#) ('carrier guidance')

The following groups of people with pending EU Settlement Scheme status are told they cannot travel to the UK (or leave and return to the UK):

1. People from the EU, EEA or Switzerland who were not living in the UK by 31 December 2020 and have applied to the EUSS as a joining family member, unless they have:
 - a UK issued BRC or EEA family permit (which EEA/Swiss citizens are unlikely to have) or an EUSS family permit (which EEA/Swiss citizens do not need to apply for if they have biometric identity documents but which in any case face long delays)
2. People who are not from the EU, EEA or Switzerland, who were living in the UK by 31 December 2020, unless they have:
 - a UK issued BRC or EEA family permit (which could be lost or stolen), or an EUSS family permit (which they won't have applied for if they applied from inside the UK); or
 - Proof of eligibility - e.g. by demonstrating family relationship and residence

3. People who are not from the EU, EEA or Switzerland, who were not living in the UK by 31 December 2020, unless they have:
 - o a UK issued BRC or EEA family permit, or an EUSS family permit

Furthermore, the following groups of people with pending EU Settlement Scheme status are theoretically able to enter the UK, but may be prevented from boarding carriers to travel to the UK:

4. Visa nationals with pending EU Settlement Scheme status but whose EUSS Family Permit has expired (section 2.4 of the 'carrier guidance' explicitly instructs carriers to demand a valid visa and not to accept a Certificate of Application)
5. EU/EEA/Swiss nationals with pending EU Settlement Scheme status where carriers know their purpose of travel to the UK is not merely to visit (not explicitly, but 1.3 of the 'carrier guidance' contradicts other statements that carriers should not be checking the immigration status of EEA/Swiss nationals)
6. Other non-visa nationals with pending EU Settlement Scheme where carriers know their purpose of travel to the UK is not merely to visit (the 'carrier guidance' makes clear that carriers should check visas and immigration status in such cases)

We note that Article 14(3) of the Withdrawal Agreement states:

"Where the host State requires family members who join the Union citizen or United Kingdom national after the end of the transition period to have an entry visa, the host State shall grant such persons every facility to obtain the necessary visas. Such visas shall be issued free of charge as soon as possible, and on the basis of an accelerated procedure."

Furthermore, Article 18(1)(e) of the Withdrawal Agreement states:

"the host State shall ensure that any administrative procedures for applications are smooth, transparent and simple, and that any unnecessary administrative burdens are avoided;"

Article 18(3) of the Withdrawal Agreement states (and we note that "all rights provided for in this Part" includes "Article 14 Right of exit and of entry"):

"Pending a final decision by the competent authorities on any application referred to in paragraph 1, and pending a final judgment handed down in case of judicial redress sought against any rejection of such application by the competent administrative authorities, all rights provided for in this Part shall be deemed to apply to the applicant, including Article 21 on safeguards and right of appeal, subject to the conditions set out in Article 20(4)."

We would like to ask the following questions on implementation and policy reasoning:

- Q1. We are hearing of very long delays in EUSS Family Permits being issued. An FOI (ref 67879) asking "Can you please provide average and median processing time from application to decision for family permits, for applications decided in the most recent 12 months available?" was refused on cost grounds. How is the Home Office monitoring whether EUSS Family Permits are being issued on the basis of an accelerated procedure, as per Article 14(3) of the Withdrawal Agreement?

- Q2. What is the policy justification for retaining someone's passport while they wait (sometimes for over a year) for a visa decision to be made, thereby removing their ability to travel to other countries than the UK? We are aware that in some countries it is possible to request the return of the passport, however, this comes at an additional charge and is not easily identifiable. Where the visa in question is an EUSS Family Permit, how is this passport retention policy compatible with Article 14(3) of the Withdrawal Agreement?
- Q3. EU/EEA/Swiss joining family members with biometric identity documents are entitled to apply directly to the EU Settlement Scheme from outside the UK¹. They then cannot travel to the UK until their application is concluded.
- a. Why can they not directly travel to the UK with the intention of applying for EUSS status once in the UK, given that other EU/EEA/Swiss citizens are able to enter the UK visa-free as visitors, and given Article 18(1)(e) of the Withdrawal Agreement?
 - b. Why can they not travel to the UK on the basis of a pending EUSS application, given that other EU/EEA/Swiss citizens are able to travel visa-free to the UK as visitors, and given Article 18(3) of the Withdrawal Agreement?
- Q4. Other non-visa national joining family members (who are not EU/EEA/Swiss nationals, and who do not already have a valid UK issued biometric residence card) have to apply for an EUSS Family Permit before they can travel to the UK to apply for EUSS status.
- a. Why can they not directly travel to the UK with the intention of applying for EUSS status once in the UK, given that their other compatriots are able to enter the UK visa-free as visitors, and given Article 18(1)(e) of the Withdrawal Agreement?
 - b. Why can they not travel to the UK on the basis of a pending EUSS Family Permit, given that their non-visa compatriots can travel visa-free to the UK as visitors?
 - c. Why do they need to apply for an EUSS Family Permit, rather than being able to apply directly to the EUSS from outside the UK, using either biometric passports if they have one, or paper applications, given that their non-visa compatriots can travel visa-free to the UK as visitors, and given Article 18(1)(e) of the Withdrawal Agreement?
- Q5. We have received many reports of people with an EUSS Family Permit who have now been waiting a very long time for a decision on an application for status under the EUSS.
- a. An EUSS Family Permit is granted once eligibility (for family relationship) and suitability checks have been concluded. Are those eligibility and suitability checks repeated from first principles (without reference to the EUSS Family Permit application) when someone makes a subsequent application for status under the EUSS, even when they make that application within a matter of days of arriving in the UK once their EUSS Family Permit is granted?
 - i. If so, how is this practice in accordance with Article 18(1)(e) of the Withdrawal Agreement? For an application within six months of an EUSS Family Permit being issued, would checking for evidence of residence in the UK not be sufficient for an application for status under the EUSS?

¹ <https://www.gov.uk/settled-status-eu-citizens-families/applying-for-settled-status>

- ii. If not, why are some subsequent applications to the EUSS (following grant of an EUSS Family Permit) taking months to conclude? Is the Home Office monitoring the lengths of these applications in order to demonstrate compliance with the combined effect of Articles 14(3) and 18(1)(e)?
- b. If the EUSS application is pending for longer than the validity of their EUSS Family Permit, they are effectively unable to travel and return to the UK, as they are highly likely to be denied boarding. This is despite the fact that the 'border guidance' (p38) states that someone with a pending EUSS application and expired EUSS FP has temporary protection and should be allowed to enter the UK.
 - i. Why therefore, does the 'carrier guidance' state (our emphasis): "*Visa nationals who have a valid pending application to the EU Settlement Scheme are advised not to travel to the UK until their application is granted unless they hold a **valid visa or visa exemption document. A Certificate of Application or Acknowledgement of Application is not satisfactory evidence of status.***"?
 - ii. How is this restriction of travel compatible with Article 18(3) of the Withdrawal Agreement, given that the applicant had been granted an EUSS Family Permit, and has submitted an application for status under the EUSS?

Q6. We have also received reports from visa-national family members who were resident in the UK on or before 31 December 2020, who have applied to the EU Settlement Scheme with their EEA Biometric Residence Card (BRC), and whose EUSS application is pending for longer than the validity of their BRC. As in Q5(b) above, they are effectively denied freedom of travel once their BRC expires because they will be denied boarding by carriers, despite the fact that the 'border guidance' (p38) states that someone with a pending EUSS application and expired EEA BRC has temporary protection and should be allowed to enter the UK.

- a. As in Q5(a)(i), what is the justification for the UK Government not ensuring that carriers must allow people with expired BRCs and pending EUSS applications to be allowed to travel back to the UK?
- b. Why can people only apply for replacement BRCs once they are granted EUSS status, and not while they have pending EUSS applications?

These questions around rights with pending applications are becoming more numerous and urgent, because of the increased delays in decision making on applications. If accurate decisions were to be made more quickly, these above problems would become less numerous and their effects would be somewhat mitigated.

Kind regards,

Monique Hawkins

Policy and research officer, the3million