

CHAPTER 3

ISSUE OF AN EEA FAMILY PERMIT

CONTENTS

1 Introduction

- 1.1 Key points
- 1.2 General Information
- 1.3 Relevant rights given by Directive 2004/38/EC

2 Family Permit - procedures

- 2.1 Handling and assessing applications for EEA Family Permits
- 2.2 Issue of a Family Permit

3 Refusal of (or refusal to admit someone with) an EEA Family Permit

- 3.1 Refusal wordings
- 3.2 Right of Appeal against Refusal

4 Further Information

1 Introduction

An EEA family permit is a form of entry clearance issued to the non-EEA national family members of an EEA national who is in, or intends to come to, the United Kingdom in order to exercise a Treaty right. As with other aspects of the entry clearance system, the administration of the EEA family permit system rests with Visa Services.

This means that caseworkers will see relatively few applications for an EEA family permit. Those they see will fall into one of two categories:

- Referred cases. The ECO (Entry Clearance Officer) has referred the case to the Home Office for a decision on the application, perhaps because there are wider policy issues involved.
- Deferred cases. The ECO has deferred the case to the Home Office for advice or for further information to be obtained. Caseworkers must remember that in a deferred case the responsibility for the final decision rests with the ECO.

1.1 Key points

- EEA family permits may be obtained from any British Embassy, High Commission or Consulate abroad which is designated by the FCO as an issuing post.
- It is not necessary for an applicant to travel to his/her country of origin to apply.
- EEA family permits are issued free of charge.
- EEA family permits are valid for 6 months from the date of issue and may be used for multiple entries within that time.
- EEA family permit applications are given priority treatment by posts abroad.
- Direct family members are defined in Article 2 of the Free Movement Directive (2004/38/EC) as a spouse, civil partner, child under 21 or dependent children over 21 and dependent direct relatives in the ascending line.
- Extended family members are defined in Article 3(2) of the same Directive as other dependent family members and durable partners.
- The ECO may refer to the Home Office for further enquiries and/or a decision. Though such instances will be rare, referrals should be actioned as priority cases.
- Family permits are also issued to persons seeking entry under “Surinder Singh” criteria (see *Chapter 1*).
- Under Directive 2004/38/EC (and based on regulation 8 of the Immigration (EEA) Regulations 2006) “extended family members” may be issued an EEA family permit if in all the circumstances it is appropriate to do so¹.

¹ Applications should be considered on a case-by-case basis

1.2 General Information

The Free Movement of Persons Directive (2004/38/EC) came into force on 30 April 2006. It repeals 9 Directives and amends 1 Regulation as well as including various ECJ case law (such as Baumbast and Bouchereau).

The Directive is transposed into UK legislation via the Immigration (EEA) Regulations 2006, which replace the Immigration (EEA) Regulations 2000.

Regulation 11(2) of the Immigration (EEA) Regulations 2006 requires non-EEA national family members of EEA nationals to hold EEA family permits when they enter the UK, unless they have already obtained a residence card or a permanent residence card.

N.B. If they have a valid UK residence card they do not have to obtain a Family Permit each time they leave/enter the UK.

Before an Immigration Officer refuses admission to a non-EEA national under regulation 11(2) because s/he does not produce an EEA family permit, the IO must give the non-EEA national reasonable opportunity to provide by other means proof that s/he is a family member of an EEA national with a right to accompany that national or join him/her in the UK.

If the family member is travelling independently of the EEA national and will not be joining the EEA national in the UK s/he will need to satisfy the normal entry clearance requirements for third country nationals under the Immigration Rules.

Example 1 – the Indian wife of a French national travelling to the United Kingdom for a shopping trip while the French national stays behind in France would require a visa. If she were travelling with her husband, or to join her husband who had travelled ahead of her, she would require an EEA family permit.
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1.3 Relevant rights given by Directive 2004/38/EC

Initial period of residence

EEA nationals and their family members are entitled to come to the UK for an initial period of 3 months *without* the requirement to exercise a Treaty right. Should the EEA national wish to live in the UK on a longer-term basis s/he must be a qualified person. *Please see Chapter 1 for more information on “qualified persons”.*

Extended family members of students

EEA nationals intending to exercise Treaty rights as a student are entitled to bring in their family members for the initial period of residence (i.e. the first 3 months). After that period only the student's spouse or civil partner and their dependent children under the age of 21 are entitled to remain. Other family members may, however, be treated as 'extended family members'.

For this reason, after a student's initial 3 month period of residence in the UK ECOs should only issue an EEA family permit to his/her non-EEA national family members (other than the spouse or civil partner and dependent children) if they are extended family members and the ECO feels it is appropriate in all circumstances to do so.

Example 2: A French national has been studying at a university in the UK for six months. As well as his wife, he would like to bring his father to live with him in the UK (he was part of the EEA national's household when he lived in France). The wife will be entitled to an EEA family permit if she meets the requirements under the regulations. The father will be an extended family member of the student and an EEA family permit may be issued for the father if in all the circumstances it is appropriate to do so.

Civil Partners and Durable Relationships

The Directive considers civil partners (based on the meaning given in paragraph 59 of Schedule 27 to the Civil Partnership Act 2004) as family members. In addition, the partner of an EEA national who is in a "durable relationship" with the EEA national may have his/her application considered under the 2006 Regulations as an extended family member. The partnership should be assessed on the basis of the criteria stipulated in *Chapter 5, section 1 of the ECIs*.

Example 3: A Russian national wishes to travel to the UK with his Lithuanian partner. They are not civil partners. The Russian national will be an extended family member under regulation 8(5) of the 2006 Regulations *if* he can show that the relationship is a durable one on the basis of the criteria stipulated *under Chapter 5 of the ECIs*. As an extended family member he may be granted an EEA family permit if it is appropriate in all the circumstances to do so.

Permanent Residence

An EEA national (and his/her family members) "acquire" permanent residence after 5 years exercising Treaty rights in the UK. This differs from previous UK domestic legislation (revoked in April 2006), where EEA nationals (and their family members) could be granted ILR if they had exercised Treaty rights in the UK for 4 years and continued to do so.

2 Family permit - procedures

2.1 Handling and assessing applications for EEA Family Permits

Children's Duty

Section 55 of the Borders, Citizenship and Immigration Act 2009 requires the UK Border Agency to carry out its existing functions in a way that takes into account the need to safeguard and promote the welfare of children in the UK. It does not impose any new functions, or override existing functions.

Officers must not apply the actions set out in this instruction either to children or to those with children without having due regard to Section 55. The UK Border Agency instruction 'Arrangements to Safeguard and Promote Children's Welfare in the United Kingdom Border Agency' sets out the key principles to take into account in all Agency activities.

Our statutory duty to children includes the need to demonstrate:

- Fair treatment which meets the same standard a British child would receive;
- The child's interests being made a primary, although not the only consideration;
- No discrimination of any kind;
- Asylum applications are dealt with in a timely fashion;

- Identification of those that might be at risk from harm.

Dealing with applications

Under EC law, priority must be given to applications for Family Permits. It is therefore important that when caseworkers receive a referral or deferral from an ECO it is dealt with on a priority basis.

In assessing an EEA Family permit application, we should be satisfied that the applicant meets the following criteria:

DIRECT FAMILY MEMBERS

Summary: Applicants claiming to be direct family members have to show that they are related as claimed to an EEA national who is exercising treaty rights in the UK or who intends to do so. If they can establish this, they have a right to an EEA family permit unless they fall to be excluded from the UK on grounds of public policy, public security or public health.

Criteria

Criteria for non-EEA national direct family members:

- Holds a **valid passport**.
- Has evidence that they are **related as claimed** e.g. genuine marriage certificate or birth certificate.

And in addition:

- The **EEA national**:
 - a. is residing in the UK in accordance with the EEA Regulations and the non-EEA national is joining them; or
 - b. intends to travel to the UK within 6 months and will have a right to reside under the Regulations on arrival, and the non-EEA national will be accompanying or joining him/her.
- If applying as a spouse or civil partner, there are no grounds to consider that the **marriage or civil partnership is one of convenience** (see *ECI Chapter 5*).
- There are no reasons of **public policy, public security or public health** to refuse entry to the UK (see *ECI Chapter 8*).
- For dependent family member's **financial dependency** is established as follows:
 - Financial dependence should be interpreted as meaning that the family member needs the financial support of the EEA national or his or her spouse/ civil partner in order to meet the family member's essential needs in the country where they are present – not in order to have a certain level of income. The applicant must be wholly or mainly financially dependent on the EEA principle to meet his/her essential needs in order to qualify for a family permit.

The following criteria, whilst not in themselves grounds for refusal, should be taken into consideration when assessing dependent direct family members:

- **Are there any other close relatives in the country of origin** from whom the family member receives material support? [Example: Where the family member receives funds from the EEA national, but is living in the

same household as a relative who provides their food and accommodation, the family member can not be said to need the financial support of the EEA national in order to meet his/her essential needs].

- **Is the family member living an independent life?** [Example: Where the family member is married (and especially if they have children), it may be questionable as to whether the EEA national is supporting the essential needs of both the family member and their spouse and children. In these cases additional attention should be paid to ensure that the financial essential needs of the family are being met by the EEA national].

EXTENDED FAMILY MEMBERS

Summary: Applicants claiming to be extended family members must establish that they are extended family members of an EEA national exercising Treaty rights in the UK or intending to exercise such rights. They are not, however, entitled to an EEA family permit on this basis alone. An extensive examination of their personal circumstances should be undertaken and a family permit should only be issued if in all the circumstances it appears appropriate to do so.

Criteria

Criteria for non-EEA national extended family members:

- Holds a **valid passport**,
- Has evidence that s/he is **related as claimed** (e.g. genuine birth certificate), and
- Has proof that they are a **member of relevant EEA national's household**. This should mean living under the same roof for a period of at least six months in the country of origin.

Regulation 8 of the Immigration (EEA) Regulations 2006 lays down additional criteria for extended family members, which should be considered (where relevant) before a decision is made on an EEA family permit application:

- The person is a relative of the EEA national, his spouse or his civil partner and strictly requires personal care from the EEA national (his spouse, or his civil partner) on **serious health grounds**,
- A person who is the partner of the EEA national and can show the decision maker that s/he is in a durable relationship¹ with the EEA national. (See *Chapter 5, Section 1 of the ECIs*).

¹ See section 1.3 for more information

And in addition:

- The **EEA national**:
 - a. is residing in the UK in accordance with the EEA Regulations and the non-EEA national is joining them; or
 - b. intends to travel to the UK within 6 months and will have a right to reside under the Regulations on arrival, and the non-EEA national will be accompanying or joining him/her.
- There are no reasons of public policy, public security or public health to refuse entry to the UK (see *ECI Chapter 8*).
- For dependent extended family members **financial dependency** is established as follows:

- Financial dependence should be interpreted as meaning that the family member needs the financial support of the EEA national or his or her spouse/ civil partner in order to meet the family member's essential needs in the country where they are present – not in order to have a certain level of income. The applicant must be wholly or mainly financially dependent on the EEA national to meet his/her essential needs in order to qualify for a family permit.

Other criteria only to be applied to extended family members

If the application is being made from another Member State:

A permit should, generally, only be issued to an extended family member if s/he is lawfully resident in another Member State. This would normally be shown in the form of either the local equivalent of leave to enter/remain or an EEA residence card if he/she is the extended family member of an EEA national residing in a Member State of which he/she is not a national.

Evidence of an outstanding application to reside in the Member State in question would not be considered as sufficient evidence of lawful residence, and the applicant should be advised to await the outcome of their application before seeking an EEA family permit.

Example 4: The Indian brother of a Portuguese national, who lives *illegally* in Portugal with the Portuguese national. The brother applies for an EEA family permit in order to accompany the Portuguese national to the UK. We should only issue an EEA family permit if the brother would meet the requirements in the immigration rules for leave to enter the UK (other than the requirement for entry clearance) as the brother of the Portuguese national if the Portuguese national was present and settled in the UK.

The following criteria should be taken into consideration when assessing dependent extended family applications from another Member State:

- **Are there any other close relatives in the country of origin** from whom the family member receives material support? [Example: Where the family member receives funds from the EEA national, but is living in the same household as a relative who provides their food and accommodation, the family member can not be said to need the financial support of the EEA national in order to meet his/her essential needs].
- **Is the family member living an independent life?** [Example: Where the family member is married (and especially if they have children), it may be questionable as to whether the EEA national is supporting the essential needs of both the family member and their spouse and children. In these cases additional attention should be paid to ensure that the financial essential needs of the family are being met by the EEA national].

If the application is being made by a person resident outside the European Union

The extended family member would be expected to meet the requirements in the immigration rules (other than those relating to entry clearance) for leave to enter the United Kingdom as the extended family member of the EEA national or his/her spouse or civil partner.

Example 5: The Nigerian aunt of a German national, who lives in Nigeria. The aunt applies for an EEA family permit to join her German nephew who is working in the UK. We should only issue an EEA family permit if the aunt would meet the requirements in the immigration rules for leave to enter the UK (other than the requirement for entry clearance) as the aunt of the German national if the German national was present and settled in the UK.

You should only issue an EEA family permit to an extended family member if the particular facts of the case merit issuing the permit.

2.2 Issue of a Family Permit

The applicant should be issued a Category D Vignette. There are two types of endorsement on a Family Permit. This will be either:

FAMILY MEMBER _____ (specify as appropriate) OF AN EEA NATIONAL WHO WILL BE TRAVELLING WITH HIS/HER EEA FAMILY MEMBER

Or

FAMILY MEMBER _____ (specify as appropriate) OF AN EEA NATIONAL WHO WILL BE JOINING HIS/HER EEA FAMILY MEMBER IN THE UK

An EEA Family Permit should be made valid for 6 months from the date of issue and may be used for multiple entries to the UK during that period.

3 Refusal of (or refusal to admit someone with) an EEA family permit

The Immigration Officer retains the right to refuse entry to an EEA family permit holder if:

- The revocation of the document is justified on grounds of public policy, public security or public health; or
- The person is not at the time the family member of an EEA national with a right to reside in the UK under the 2006 Regulations or is not accompanying or joining that EEA national

3.1 Refusal wordings (see section 3.2 for guidance on appeals)

(a) The EEA principal is not in, or will not be going to, the UK.

The following form of words should be used:

You have applied for an EEA family permit for admission to the United Kingdom as the family member of a European Economic Area national, but I am not satisfied that the European Economic Area national of whom you are a family member is in, or will be coming to, the United Kingdom.

(b) The applicant does not provide any (or adequate) evidence to support his claim to be a family member of an EEA national.

Where the applicant has failed to provide a marriage certificate, birth certificate or other evidence that they are related as claimed.

The following form of words should be used:

You have applied for an EEA family permit for admission to the United Kingdom as the family member of a European Economic Area national, but in view of your failure to produce documentary evidence as requested, I am not satisfied that you are related to the European Economic Area national as claimed.

(c) The applicant is not genuinely dependent on the EEA national or his/her spouse.

This does not apply to spouses/civil partners or children aged under 21, except in the case of a student who has been resident in the UK for more than 3 months, where the children must be dependent.

The following form of words should be used:

You have applied for an EEA family permit for admission to the United Kingdom as the family member of a European Economic Area national. In order to qualify as a family member you are required to be financially dependent on the European Economic Area national but I am not satisfied that you are dependent as claimed.

(d) Extended Family Members

In cases involving extended family members – the applicant may have provided evidence of dependency or that s/he lived as part of the EEA national's household prior to coming to the UK. However, there are insufficient grounds to believe that the EEA national would be deterred from exercising his/her Treaty rights if their family member could not come to the UK.

The following form of words should be used:

You have applied for an EEA family permit for admission to the United Kingdom as the family member of a European Economic Area national. I have undertaken an extensive examination of your personal circumstances in accordance with Regulation 12 of the Immigration (European Economic Area) Regulations 2006 but I am not satisfied that there are sufficient grounds for issuing you with an EEA family permit for the following reasons ...

(e) We are satisfied that the EEA national (who is in the UK) is not a qualified person because there is no evidence of Treaty rights being exercised:

You have applied for an EEA family permit for admission to the United Kingdom as the family member of a European Economic Area national residing in the United Kingdom but I am not satisfied that the European Economic Area national of whom you are a family member is residing in the United Kingdom under the Immigration (European Economic Area) Regulations 2006 as required.

Please note: because of the initial right of residence created by Directive 2004/38, we cannot refuse someone on the basis that we are not satisfied that they will be exercising a Treaty right in the UK from day one. Please see section 1.2.1 for more information.

(f) The applicant is a party to a marriage of convenience.

The following form of words should be used:

You have applied for and EEA family permit for admission to the United Kingdom as the spouse of a European Economic Area national, but I am satisfied that it is a marriage of convenience.

3.2 Right of Appeal against Refusal

An applicant for an EEA family permit has the right of appeal against refusal under the 2006 Regulations, as it constitutes an “EEA decision”, (a decision under the EEA Regulations concerning a person’s entitlement to be admitted to the UK). *Please refer to regulation 27(1)(c) of the 2006 Regulations for more information on out of country appeals.*

However, a person claiming to be a family member of an EEA national may not appeal under the EEA Regulations where:

- S/he has not produced any evidence of the EEA national’s nationality, or, that s/he is related, as claimed, to the EEA national.

[Section 11(1) of the 1993 Act was repealed by the 1999 Act; the EEA Regulations do not apply section 88(2) of the 2002 Act (the equivalent provision) to EEA decisions under EEA Regulations].

4 Further Guidance

- *Further guidance on whether the EEA national is exercising a Treaty right can be found in ECI Chapter 1.*
- *Further guidance on assessing whether someone qualifies as the family member of an EEA national is in ECI Chapter 2.*