

CHAPTER 4

REGISTRATION CERTIFICATE APPLICATIONS

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4. Registration certificate

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.

Registration Certificates

If an EEA national is exercising Treaty rights in the UK then s/he may request that s/he is issued with a registration certificate as confirmation of his/her right of residence under EC law.

Application Form

An application form, EEA1, is available for use when applying for a registration certificate. However, there is no requirement for the applicant to complete this form. Furthermore, in contrast to the regulations governing applications made under the Immigration Rules, an application cannot be rejected because the form has not been used or has not been fully completed.

4.1 Treaty Rights

Treaty rights refer to any of the following:

- Employment (including job seeking)
- Self-Employment
- Study
- Economic Self-Sufficiency

For a more detailed definition of each of these categories please see Chapter 1.

4.2 Qualifying for a Registration Certificate

Before a Registration Certificate is issued the applicant must produce the following:

- Evidence of EEA nationality, i.e. a valid passport or national identity card. (See below the instruction concerning Estonia, Lithuania, and Latvian Alien passports).
- Evidence that they are a qualified person in that they are exercising a Treaty right, or they are the spouse, civil partner, partner, or family member of a person exercising a Treaty right.

Estonia, Lithuania, and Latvia – (The Baltic States) – Alien Passports

Caseworkers **must** make sure that Estonia, Lithuania and Latvia passports confirm the nationality of the person as being Estonian, Lithuanian, or Latvian, and that the passport is not an 'Alien' passport.

Alien passports are issued to persons of Russian origin who moved to the Baltic States when they were part of the former Soviet Union. These persons are not regarded as being citizens and therefore the Estonian, Lithuanian, and Latvian authorities issue them with Alien passports.

While they look very similar, Alien passports are not proof of EEA nationality. Alien passports can be identified by looking at the personal details page, where the holder will be noted as holding an Aliens passport.

If you receive an application from someone claiming to be an EEA national but the passport they submit is an Aliens passport, then the application should be refused on the basis that they are not an EEA national.

Photographs

An application for a registration certificate should be accompanied by 2 passport sized photos of the EEA national. One is featured on the registration certificate and the other retained in our case records.

If the application includes dependent children who are also EEA nationals, each child is entitled to be issued with a registration certificate. If a child does not have his/her own passport or ID card, but is featured on his/her EEA national parent's passport, this is proof that the child is also an EEA national. Photographs of any EEA national children included in the application are also required.

If an EEA national qualifies for the issuing of a registration certificate but no photographs have been supplied then we must request the submission of photographs. If after a request is sent, photographs are not supplied the case must be submitted to a Senior Caseworker.

4.3 Time Scale for consideration

Regulation 16 of the 2006 Regulations requires that a Registration Certificate be issued to a 'qualified person', i.e. an EEA national who is exercising a Treaty right, immediately upon application.

Applications considered by European casework

We aim to deal with postal applications within 20 days.

Applications considered by the PEO

Applicants will be able to attend the PEO so that their application can be dealt with over the counter. It is necessary for the applicant to have booked an appointment. **Only** EEA nationals applying for a registration certificate will be dealt with by the PEO. European law provides for a period of 6 months between the submission of an application for a residence card by a non-EEA national family member and a decision being made. No applications by non-EEA national family members will be dealt with in the PEO.

4.4 Checks that must be conducted before a registration certificate can be issued

Prior to issuing a registration certificate we must be satisfied that the EEA national is an EEA national and that s/he is exercising a Treaty right.

- In cases where an EEA national is exercising Treaty rights as an employed person or student the name of the employer or college must be entered in the relevant section of the 'sponsor' box on CID.

4.5 Issuing a registration certificate

Once the relevant checks have been completed the caseworker must issue a registration certificate if s/he is satisfied that the EEA national is exercising a Treaty right, unless issuing of the registration certificate is to be refused on public policy, public security or public health grounds.

The issuing of a registration certificate must not be delayed by any application submitted by a non-EEA national family member.

The registration certificate takes the form of a vignette placed in a free standing document.

- ECD.3107 is the appropriate covering letter.

4.6 Issuing a Swiss registration certificate

Although Swiss nationals are not EEA nationals the Agreement between the EU and its Member States and the Swiss Confederation on the Free Movement of Persons in general terms confers on Swiss nationals and their family members the same rights as those enjoyed by EEA nationals and their family members. Under the 2006 EEA Regulations Swiss nationals are treated like EEA nationals – they are included in the

definition of “EEA national” and are entitled to be issued with a registration certificate in the same circumstances as other EEA nationals.

If a Swiss national qualifies s/he is issued with a Swiss registration certificate.

The Swiss registration certificate takes the form of a vignette placed in a free standing document.

- ECD.3107 is the appropriate covering letter.

4.7 Refusing registration certificate applications

Any application for the issuing of a registration certificate can be refused in the event of any of the following:

- ◆ Evidence of EEA nationality is not supplied.* [ideally asterisks should refer to footnotes at the bottom of the page]
- ◆ Evidence of EEA nationality is forged / counterfeit.
- ◆ Evidence of the exercise of Treaty rights is not supplied.
- ◆ Enquiries reveal that either the evidence of the exercise of Treaty rights is false, that the EEA national has left the UK, or that the EEA national has ceased to exercise Treaty rights.**
- ◆ Refusal is justified on the basis of Public Policy, Public Health or Public Security.***

*In cases where no document confirming evidence of EEA nationality is supplied the application is refused by letter without a right of appeal.

**A worker does not cease to be a qualified person solely because they are temporarily unable to work due to illness or accident, or if they have become involuntarily unemployed and are seeking work. In cases where an EEA national has become involuntarily unemployed they will continue to qualify if they have been in employment in the UK for at least a year, have been unemployed for no more than six months, or can provide evidence that they are looking for work and have a genuine chance of being engaged.

***Cases involving Public Policy, Public Health or Public Security are rare but a European national who has been convicted of a crime may still apply for a Registration Certificate. If Criminal Casework Team (CCT) are taking deportation action, or are intending to take deportation action, against the individual then it will be appropriate to refuse a Registration Certificate on the basis of Public Policy. All cases must be referred to an SCW.

4.8 Regulation to quote on the refusal form and the Reason For Refusal Letter (RFRL) and wording for the refusal form:

Refusal registration certificate no evidence of EEA nationality provided:

- ECD.3116 is the appropriate letter. There is no right of appeal.

Wording:

You have applied for a registration certificate as confirmation of a right of residence in the United Kingdom. However, in view of the fact that you have failed to produce a valid identity card or a valid passport issued by an EEA State, you have not provided evidence that you are entitled to rely on the provisions of the Immigration (EEA) Regulations 2006.

Refuse registration certificate EEA national not exercising Treaty rights:

Regulation 6 of EEA Regulations 2006

- ECD.3125 is the appropriate refusal template.

Wording:

You have applied for a registration certificate under the Immigration (European Economic Area) Regulations 2006 as confirmation of a right of residence in the United Kingdom under those Regulations as a qualified person, as defined in regulation 6 of the Regulations. However, you have failed to provide evidence that you are qualified person as defined.

Refuse registration certificate EEA passport or ID card is forged / counterfeit:

Regulation 6 of EEA Regulations 2006

- ECD.3131 - Refuse Registration Certificate - Forged Passport / ID Card

Wording:

You have applied for a registration certificate under the Immigration (European Economic Area) Regulations 2006 as confirmation of a right to reside in the UK under those Regulations. However, the ID card / passport that you have produced as evidence of your EEA nationality is counterfeit / forged. You are not therefore entitled to rely on the provisions of the Regulations.

Refuse registration certificate EEA national - Public Policy, Public Health or Public Security:

Regulation 20(1) of EEA Regulation 2006

- ECD.3125 is the appropriate refusal template.

Wording:

You have applied for a registration certificate under the Immigration (European Economic Area) Regulations 2006 as confirmation of a right to reside in the UK under those Regulations. However, you would pose a threat to the requirements of public policy if allowed to remain in the United Kingdom.

4.9 Appeal Rights

- A refusal to issue a registration certificate on the grounds that an EEA national is not exercising a Treaty right attracts a full 'in country' right of appeal under Regulation 26 of the 2006 Regulations.
- A refusal to issue a registration certificate on the grounds that the passport or ID card that is submitted is forged / counterfeit attracts no right of appeal. ECD.3131 is used. This is due to the fact that Regulation 26(2) of the 2006 Regulations states that a person may not appeal under the Regulations unless a valid national identity card or passport issued by an EEA state is produced.
- A refusal to issue a registration certificate on the grounds of Public Policy, Public Health, or Public Security attracts a full 'in country' right of appeal under Regulation 26 of the 2006 Regulations.
- If no evidence of EEA nationality has been supplied then there is no right of appeal and the application is refused by letter. ECD.3116 is used. An applicant would need to supply a valid passport or ID card as evidence of EEA nationality before qualifying for a right of appeal under the 2006 Regulations.

4.10 Revocation of registration certificates.

- Regulation 20(2) of the 2006 Regulations makes provision for the revoking of a Registration Certificate if:

...“the holder of the certificate...has ceased to have a right to reside under the Regulations”.

Therefore, if an EEA national has ceased to exercise Treaty rights, or it is discovered that the passport or ID card submitted as evidence of EEA nationality was forged / counterfeit, the registration certificate should be revoked.

There is a full 'in country' right of appeal under Regulation 26 if a registration certificate is revoked on the basis that the EEA national has ceased to exercise Treaty rights, or if the evidence of EEA nationality was forged /counterfeit.

- Regulation 20(1) of the 2006 Regulations makes provision for the revoking of a Registration Certificate on the grounds of public policy, public security or public health.

It is rare to encounter such a case but a European national who has been convicted of a crime may have been issued with a registration certificate. If Criminal Casework Team (CCT) are taking deportation action, or are intending to take deportation action, against the individual then it will be appropriate to revoke a registration certificate on the basis of Public Policy.

For more information concerning Public Policy, Public Security, and Public Health please see Chapter 8.

There is a full 'in country' right of appeal under Regulation 26 if a registration certificate is revoked on the basis of Public Policy, Public Security, or Public Health.

4.11 Regulation to quote on the revocation form and the Reason For Revocation Letter (RFRL) letter:

Revoke registration certificate, EEA national no longer exercising Treaty rights:

Regulation 20(2) of EEA Regulations 2006

- ECD.3127 is the appropriate revocation template.

Wording:

On you were issued a registration certificate under the Immigration (European Economic Area) Regulations 2006 as confirmation of a right to reside in the UK under those Regulations as a qualified person, as defined in regulation 6 of the Regulations. However, it appears that you have ceased to be a qualified person and are therefore no longer entitled to a registration certificate.

Revocation of registration certificate: EEA passport or ID card is forged / counterfeit:

Regulation 20(2) of EEA Regulations 2006

- ECD.3133 - Revoke registration certificate - Forged Passport / ID Card

Wording:

On you were issued a registration certificate under the Immigration (European Economic Area) Regulations 2006 as confirmation of a right to reside in the UK under those Regulations as a qualified person, as defined in regulation 6 of the Regulations. However, checks have revealed that the passport / ID card you submitted as evidence of your EEA nationality is forged / counterfeit. Therefore you are not a qualified person and are not entitled to a registration certificate under the Regulations.

Revocation of registration certificate: EEA national - Public Policy, Public Health, or Public Security:

Regulation 20(1) of EEA Regulation 2006

- ECD.3127 is the appropriate revocation template

Wording:

On you were issued a registration certificate under the Immigration (European Economic Area) Regulations 2006 as confirmation of a right to reside in the UK under those Regulations. However, you would pose a threat to the requirements of public policy if allowed to remain in the United Kingdom.

4.12 Appeal rights in revocation cases

All revocations attract a full 'in country' right of appeal under Regulation 26 of the 2006 Regulations.

4.13 Exercise of Treaty rights by EEA national minor children and the rights of their non-EEA national family members (Chen cases).

Ruling in European Court of Justice (ECJ) case of Chen. ECJ C-200/02.

All applications made on this basis must be referred to a Senior Caseworker prior to a decision to either grant or refuse being dispatched.

In the case of Chen the ECJ ruled that an EEA national child who holds sickness insurance would have a right to reside in the UK with his or her non-EEA national parent provided that there are sufficient resources to ensure that the child did not become a burden on public funds.

This ruling did not state that the EEA child's parent(s) / primary carer would have a right to reside as a "family member" as defined in EC law. To be such a family member the parent is required to be financially dependent on the child, whereas in the Chen type case it is the child who is financially dependent on the parent. The parent(s) / primary carer is therefore entitled to reside in a Member State with a self-sufficient EEA national child solely to facilitate the child in exercising Treaty rights.

Prior to the Chen ruling it was our policy that children under the age of 16 were not capable of exercising Treaty rights and applications from non-EEA parents were refused on that basis.

Following the Chen ruling, EEA children may qualify for a registration certificate on the basis of being self-sufficient. The child must be self-sufficient without relying on funds earned by a non-EEA national parent(s) / primary carer in the UK, unless this comes from legal employment / self-employment (i.e. if the parent(s) / primary carer is in the UK on a work permit).

Paragraph 257C of the Immigration Rules allows for non-EEA national parents / primary carer, and other close relatives, of self-sufficient EEA national children to be granted leave to enter or remain in the UK. The leave granted does not allow the parents / primary carer, or other relatives, the right to work in the UK.

4.14 Issue of a registration certificate to an EEA national child

An EEA national minor child will qualify for a registration certificate on the basis of having a right of residence in the UK as a self-sufficient person provided that we have been supplied with:

- Evidence of the child's EEA nationality.
- Evidence that there are sufficient resources available to ensure that the EEA national child does not become a burden on public funds.

Assessing Sufficient Resources

- When assessing whether there are sufficient resources to ensure that the child does not become a burden on public funds we should take account of any relatives who are residing in the UK with the child. For instance, if the child is living in the UK with two parents you should be satisfied that there are sufficient resources available for the child and both parents.
- The funds should be sufficient for the intended period of residence. We should be satisfied that the financial resources are sufficient to ensure that the child and any relatives will not become a burden on public funds.
- We must take account of the fact that any non-EEA relatives who are granted leave to enter or remain on the basis of their relationship to an EEA child will **not** have access to the UK labour market. If there is sufficient evidence to suggest that the child's non-EEA relatives would need to work in the UK in order to support the child, the application should be refused.
- If family members are working in the UK illegally, then the child is not self-sufficient and the application should be refused.
- If the EEA child or any family members, who are seeking to remain in the UK on the basis of the EEA child, are in receipt of public funds the application should be refused.

Guidance on dealing with applications from non-EEA parents / primary carers of EEA national children are provided in Chapter 2, section 2.5.2.

4.15 EEA National Spouses of British Citizens and Settled Persons

An EEA national who is the spouse of a British citizen or settled person may make a charged application under the Immigration Rules for leave to remain **despite** the fact that they are not required to obtain leave to remain.

The primary reason why an EEA national may choose to do this is so that s/he can obtain permanent residence within 2 years rather than within 5 years. This will then allow him/her to make an application for British citizenship at an earlier stage.

These applications are subject to the normal charges applying to applications made under the Immigration Rules.

In cases where it is clear that an EEA national is applying under the Rules, i.e. a rules based application form has been completed and the appropriate fee has been paid, then the application must be allocated to European Casework, not charged casework. *The fee will not be refunded.* This is due to the fact that the payment is made for the case to be considered under the Immigration Rules.

If the application is granted, the EEA passport must **never** be endorsed, as EEA nationals are not required to obtain leave. A registration certificate should be issued if the EEA national qualifies.

- ECD.3110 is the appropriate covering letter

This letter advises that if, after the qualifying period has been completed, s/he still meet the requirements of the Immigration Rules as the spouse / civil partner of a

British citizen / settled person s/he may apply for permanent residence under the Immigration Rules.

Once again, the application for permanent residence will be chargeable, but will result in permanent residence being granted in the form of a document certifying permanent residence issued by European Casework. See Chapter 6 for more information.