



Home Office

Approach following the Geci (Albania) judgment

Version 1.0

The implications of the Upper Tribunal judgment in the case of Geci (Albania) – that EU law does not allow us to refuse to issue a residence document under the European Economic Area (EEA) Regulations on the grounds of public policy, public security, or public health – and the process to be followed in cases affected by this.

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About this guidance

This guidance tells you how to deal with cases following the judgment in Geci (Albania).

Contacts

If you have any questions about the guidance and your line manager or senior caseworker cannot help you or you think that the guidance has factual errors then email the Migrant Criminality Policy team.

If you notice any formatting errors in this guidance (broken links, spelling mistakes and so on) or have any comments about the layout or navigability of the guidance then you can email the Guidance Rules and Forms team.

Publication

Below is information on when this version of the guidance was published:

- version **1.0**
- published for Home Office staff on **29 September 2022**

Changes from last version of this guidance

This is the first version of this guidance.

Related content

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Background

This section sets out what the Upper Tribunal (UT) decided in the case of [Geci \(EEA Regs: transitional provisions, appeal rights\) Albania \[2021\] UKUT 285 \(IAC\) \(29 September 2021\) \(bailii.org\)](#) (“Geci (Albania)”).

In its judgment, the UT found that the provision in regulation 24(1) of the [Immigration European Economic Area \(EEA\) Regulations 2016](#) permitting the refusal of an EEA residence card on the grounds of public policy, public security or public health goes beyond what is permitted under the Free Movement Directive 2004/38/EC. This is because refusing a residence document is not a measure allowed for under the Directive to restrict free movement rights (unlike deportation or exclusion from the UK). This means residence card applications can no longer be refused on public policy, public security or public health grounds under regulation 24(1). Where the person concerned is the subject of a decision to remove under regulation 23(6)(b), a deportation order under regulation 32(3) or an exclusion order under regulation 23(5), the EEA document application is invalid as set out in regulation 21(4A) of the EEA Regulations 2016.

Implications

The judgment has implications for the following cases where there has been an application for an EEA document (for the purpose of this guidance, this includes all EEA residence document applications and EEA family permit applications from direct family members and derivative rights applicants) and where either:

- a decision has been made to refuse the application on public policy or public security grounds but no deportation decision/exclusion order on public policy or public security grounds has been made, or following deportation/exclusion consideration it has been considered that this test has not been met
- a decision is about to be made to refuse the application on public policy or public security grounds and deportation or exclusion on public policy or public security grounds has not yet been considered

This includes EEA nationals and non-EEA nationals with saved EEA rights refused an EEA document on public policy or public security grounds on the basis of criminal conduct or non-criminal conduct (the person has been involved in a sham marriage or civil partnership, has fraudulently obtained a right under the Citizens’ Rights Agreements or has evaded tax or duties).

The Geci judgment does not affect applications under the EU Settlement Scheme (EUSS) or for an EUSS family permit.

Criminal cases

With immediate effect, all foreign nationals applying for an EEA document must be referred to Foreign National Offender Returns Command (FNO RC) for deportation

or exclusion consideration on public policy or public security grounds if any of the following apply:

- they are the subject of a deportation order made on the ground deportation is conducive to the public good
- they are the subject of an exclusion decision made on criminality grounds
- they have been convicted of a criminal offence and received a custodial sentence in the UK or overseas
- they have been convicted in the UK or overseas of an offence which has caused serious harm
- they are a persistent offender

Sham marriage or civil partnership cases

With immediate effect, all EEA nationals and non-EEA nationals with saved EEA rights applying for an EEA document must be referred to Returns Preparations (RP) for deportation or exclusion consideration if they have entered, attempted to enter or assisted another person to enter or attempt to enter into a sham marriage or civil partnership.

An application from a non-EEA national who does not have saved EEA rights is not affected by the Geci judgment and should continue to be refused on eligibility grounds under regulation 2 of the EEA Regulations 2016, as saved.

Consideration of the EEA document application

The referral to FNO RC or RP must occur before any consideration of the EEA document application is made. FNO RC or RP must decide whether to proceed with deportation or exclusion before referring the case back to Euro casework.

If deportation or exclusion on grounds of public policy or public security is appropriate, and a decision is made to deport or exclude, the EEA document application must be invalidated under regulation 21(4A).

Where FNO RC or RP decide that deportation or exclusion on public policy or public security grounds is not appropriate, the applicant must not be refused an EEA document under regulation 24(1) or the application invalidated under regulation 21(4A).

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Review of decision to refuse on grounds of public policy or public security

The deportation or exclusion consideration must be finalised before a decision can be made on the European Economic Area (EEA) document application.

Where an EEA document application has already been refused on grounds of public policy or public security and an appeal is pending

Where deportation or exclusion on grounds of public policy or public security has not been considered (or a decision has been made not to pursue deportation or exclusion on public policy or public security grounds) and the EEA document was refused on public policy or public security grounds and an appeal is pending, you must withdraw the refusal. You must liaise with the Appeals, Litigation and Administrative Review (ALAR) team /Specialist Appeals Team (SAT) so that the appeal is treated as withdrawn or otherwise disposed of.

Where deportation or exclusion on public policy or public security grounds has not previously been considered, you must refer the case to Foreign National Offender Returns Command (FNO RC) or Returns Preparations (RP) in the case of a sham marriage or civil partnership, and await the outcome of the deportation or exclusion consideration before a decision is made on the application.

Where the applicant is already the subject of a deportation decision or order, or an exclusion order, under the [EEA Regulations 2016](#), you must withdraw the refusal of the EEA document and write to explain that the EEA document application has been invalidated under regulation 21(4A) of those regulations.

Decision not to deport or exclude on public policy or public security grounds

Where, following referral to FNO RC or RP, a decision is made not to pursue deportation or exclusion on public policy or public security grounds, you must reconsider the EEA document application.

Subject to eligibility criteria being met, you must notify the applicant that they would have qualified for an EEA residence document had the route not closed after 30 June 2021. Where the applicant is a family member of an EEA national, you must also notify them that they may rely on that letter as evidence of their family relationship if they apply to the EU Settlement Scheme (EUSS).

Where the applicant is already subject to a deportation other than by virtue of the EEA Regulations 2016 and a decision is made not to pursue deportation on public policy grounds, the original deportation order does not need to be revoked due to the EEA document application.

Decision to deport or exclude made on public policy or public security grounds

Where, following referral to FNO RC or RP, a deportation decision or exclusion order is made on public policy or public security grounds and the case referred back to UKVI to consider the EEA document application, you must write to explain that the application has been invalidated under regulation 21(4A) of the EEA Regulations 2016.

EUSS applications

Where a deportation decision or order, or an exclusion decision, has been made on the ground it is conducive to the public good (and the EEA Regulations 2016 do not apply) and the person has applied for the EUSS, the EUSS application will be considered by FNO RC before the decision to deport or exclude is made.

Where conduct was committed before 11pm on 31 December 2020, the EUSS application will be considered having regard to the public policy, public security or public health test. If the test is met, the application will be refused and removal can proceed where a deportation order is issued and the person is appeal rights exhausted or the appeal has been certified as non-suspensive of removal. If the test is not met, deportation or exclusion action cannot proceed, the application cannot be refused on those suitability grounds and EUSS leave must be granted if the other requirements for this are met. See EEA Public policy and public security decisions guidance for more information.

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