



Home Office

# Free Movement Rights: family members of British citizens

Version 3.0

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# About this guidance

This guidance tells Home Office staff how to consider an application for a residence card made by a family member of a British citizen in line with the [Immigration \(European Economic Area\) Regulations 2016](#).

## 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 Free Movement 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 **3.0**
- published for Home Office staff on **25 October 2017**

## Changes from last version of this guidance

- additional clarification that a British citizen does not need to be a 'qualified person' in their initial 3 months back in the UK
- addition of a new section about retained rights of residence
- addition of a new section about assessing UK residence prior to 25 November 2016

### Related content

[Contents](#)

### Related external links

[Free Movement of Persons Directive \(2004/38/EC\)](#)

[Immigration \(European Economic Area\) Regulations 2006](#)

[Immigration \(European Economic Area\) Regulations 2016](#)

# Introduction

This section gives you an overview of the conditions to be met when a family member of a British citizen applies for a residence card in the UK. These are often described as 'Surinder Singh' cases.

The conditions are set out in regulation 9 of the [Immigration \(European Economic Area\) Regulations 2016](#) (the 2016 regulations). The conditions reflect the Court of Justice of the European Union (CJEU) judgments in the cases of:

- [Surinder Singh \(C-370/90\)](#)
- [Eind \(C-291/05\)](#)
- [O and B \(C-456/12\)](#)
- [S and G \(C-457/12\)](#)

For further information on the judgments, see: CJEU cases of Surinder Singh and Eind and CJEU cases of O and S.

The applicant must be a direct family member of the British citizen, not an extended family member. If the conditions are met, a direct family member of a British citizen will be treated as if they are the family member of a European Economic Area (EEA) national under the [2016 regulations](#).

You must issue a residence card to the direct family member of a British citizen if:

- the British citizen exercised free movement rights as a worker, self-employed person, self-sufficient person or student in an EEA host country immediately before returning to the UK, or had acquired the right of permanent residence in the EEA host country
- the British citizen would satisfy the conditions for residence if they were an EEA national (that is they are within their first 3 months of residence or are a qualified person)
- the family member and British citizen resided together in the other EEA member state and that residence was genuine
- the purpose of the residence in the EEA host country was not to avoid any UK immigration law applying to non-EEA nationals (for example the [Immigration Rules](#))

Guidance on each of these conditions is given in the next section: [Assessing the application](#).

## Transitional arrangements

All decisions made on or after 25 November 2016 must be made in line with this guidance. This is so even where:

- a family permit was issued before 25 November 2016
- the residence card application was made before 25 November 2016

When deciding the application, you will need sufficient evidence to consider:

- whether the residence in the other EEA host country was genuine
- whether the purpose of that residence was to avoid any UK immigration law applying to non-EEA nationals (for example the Immigration Rules)

If you have insufficient evidence, perhaps because it has been submitted without, or on an old version of, the application form, you should write to the applicant for the additional evidence using the template provided.

In general, applicants should be given 10 working days to submit the requested additional evidence. The deadline can be extended if the applicant provides a good reason why more time is needed. This will normally be where the requested evidence cannot be provided within 10 working days for reasons that are beyond the applicant's control.

If the time limit to submit the requested evidence passes without response from the applicant, a decision should be taken on the evidence that is available, including any information already recorded on Home Office files or systems. You may draw any factual inferences about a person's entitlement to a right to reside if, without good reason, a person fails to provide the additional information requested.

Where the applicant has applied using an application form which does request the information listed above, you should make a decision based on the information provided without writing out for additional information.

See also [Residence under the 2006 Regulations](#) for guidance on whether residence in the UK prior to 25 November 2016 was in accordance with the Immigration (European Economic Area) Regulations 2006 (the 2006 regulations).

## Application in respect of children

Under [section 55 of the Borders, Immigration and Citizenship Act 2009](#), the Home Office has a duty to have regard to the need to safeguard and promote the welfare of children who are in the UK. In respect of this guidance, **the section 55 duty means you need to identify and act on any concerns about the welfare of any children** of whom you become aware while considering a residence card application. For more information, see: Safeguard and promote child welfare.

If an application for a residence card is to be refused because the applicant does not satisfy the conditions set out in this guidance, the duty under [section 55](#) does not change that analysis.

### Related content

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### Related external links

[Free Movement of Persons Directive \(2004/38/EC\)](#)

# Assessing the application

This section tells you how to assess whether the family member of a British citizen is entitled to a residence card.

The stages of assessing the application are as follows:

- [stage 1](#): verify the family member's eligibility to apply and British citizen's eligibility to sponsor the application
- [stage 2](#): establish whether the British citizen exercised free movement rights in the European Economic Area (EEA) host country
- [stage 3](#): determine whether residence in the EEA host country was genuine
- [stage 4](#): determine the purpose of the residence in the EEA host country
- [stage 5](#): obtain additional information if needed
- [stage 6](#): decide the application

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[Free Movement of Persons Directive \(2004/38/EC\)](#)

# Stage 1: verify the family member's eligibility to apply and British citizen's eligibility to sponsor the application

This section details the first stage of assessing whether the family member of a British citizen is entitled to a residence card.

The first stage of assessing the application is to consider whether the family member is eligible to apply for a residence card and whether the British citizen is eligible to sponsor the family member under the [Immigration \(European Economic Area\) Regulations 2016](#) (the 2016 regulations).

## Evidence of identity

The application must include evidence of identity and nationality for both the applicant and the British citizen sponsor. This should be in the form of valid passports.

If there is not sufficient evidence of identity or nationality, you must refuse the application.

## Assessing whether the British citizen is a qualified person in the UK

To be able to sponsor a family member's right to reside in the UK, the British citizen must be able to satisfy the conditions for being a qualified person, unless they are in their first 3 months of residence. This follows the Court of Justice of the European Union (CJEU) ruling in the case of [O and B](#). In this case, the CJEU found that, where an EU citizen returns to their Member State of nationality after exercising their free movement rights in another Member State, the Free Movement Directive applies by analogy to any family members wishing to accompany or join them there.

This means that a British citizen does not need to be a qualified person for the first 3 months after returning to the UK. However, to sponsor a family member's UK residence after the initial 3 month period, the British citizen needs to be the equivalent of a qualified person in the UK. Although this CJEU judgment was handed down on 12 March 2014, it reflects how the law should have been applied since the Free Movement Directive came into force on 30 April 2006. Therefore, the applicant must include evidence that the British citizen meets this condition.

For further guidance on qualified persons, see: [EEA nationals qualified persons](#).

See also [Residence under the 2006 Regulations](#) for guidance on whether residence in the UK prior to 25 November 2016 was in accordance with the Immigration (European Economic Area) Regulations 2006 (the 2006 regulations).



There are some exceptions to the ordinary conditions of being a qualified person because the sponsor is a British citizen instead of a European Economic Area (EEA) national. These are explained below.

## Jobseekers

When assessing whether the British citizen is a jobseeker in the UK, the evidence must show they are seeking employment and they have a genuine chance of being engaged. Other conditions that would usually be applied to jobseekers must be disregarded: the British citizen does not have to have entered the UK to seek employment and there is no maximum time they can be a jobseeker for.

## Comprehensive sickness insurance

If the British citizen is seeking to satisfy the conditions for being a qualified person as a self-sufficient person or student in the UK, the family member must hold comprehensive sickness insurance (CSI) to cover themselves and any other family members (for example children), but this does not need to extend to the British citizen. For further guidance on CSI see: the comprehensive sickness insurance section of the Qualified persons guidance.

## Retained workers

When assessing whether the British citizen should continue to be treated as a worker even though they are no longer working, they need to:

- have registered as a jobseeker with the relevant employment office
- provide evidence of seeking employment and having a genuine chance of being engaged

However, where the British citizen was employed for less than a year before becoming unemployed, they can only retain worker status for a maximum of 6 months.

## Evidence of relationship

The applicant must provide evidence of their relationship as a direct family member of the British citizen sponsor as follows, for:

- a spouse – a marriage certificate
- a civil partner – civil partnership certificate
- a direct descendant (child, step-child or adopted child) – documents which name the British citizen sponsor or their spouse as the parent, for example:
  - a full birth certificate
  - a legal adoption document
- a relative in the ascending line must produce documents to show the full ascending line, for example:

- a father or mother must produce their child's birth certificate naming them as the parent
- a grandfather or grandmother must produce their child's birth certificate naming them as the parent, and their grandchild's birth certificate, which names their parent

Applicants claiming to be extended family members (for example, durable partners or dependent relatives) of British citizens do not have a right of residence under the [2016 regulations](#). If the applicant is an extended family member, you must refuse the application.

## Legal guardianships

A child is not the direct descendant of a British citizen who is their legal guardian but not their biological or adopted parent. Therefore, the child cannot be considered as a direct family member. If the applicant is under the legal guardianship of a British citizen, you must refuse the application. See also: [Application in respect of children](#).

## Marriage or civil partnerships

You must decide if marriages or civil partnerships are legally valid. For guidance, see the validity of marriages section in the Direct family members guidance. You must also decide if marriages or civil partnerships are marriages of convenience. For guidance on the marriages or civil partnerships of convenience test, see the marriages of convenience section in the Direct family members guidance.

If you decide to refer a case to a senior caseworker because a marriage interview is necessary, you should first consider the rest of the application in line with this guidance. This is because after considering stages 3 and 4 you may identify other aspects of the application that should also be covered at the interview.

If the application does not include sufficient evidence of identity, the British citizen's qualified person status, or relationship (except where a marriage interview is necessary), you must refuse the application ([stage 6](#)).

If the application includes sufficient evidence, or a marriage interview is necessary, you can go to [stage 2](#) to establish whether the British citizen exercised free movement rights in the EEA host country.

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### Related external links

[Immigration \(European Economic Area\) Regulations 2016](#)  
[Free Movement of Persons Directive \(2004/38/EC\)](#)

## Stage 2: establish whether the British citizen exercised free movement rights in the EEA host country

This section details the second stage of assessing whether the family member of a British citizen is entitled to a residence card.

The second stage of assessing the application is to consider whether the British citizen exercised free movement rights in the European Economic Area (EEA) host country. For a list of EEA host countries, see: [EEA and Swiss nationals: Free movement rights](#).

You must have considered the application under [stage 1](#) before moving on to stage 2.

The applicant must provide proof that the British citizen either:

- lived and exercised free movement rights as a worker, self-employed person, self-sufficient person or student ('a qualified person') in the EEA host country immediately before returning to the UK
- acquired the right of permanent residence in the EEA host country following 5 years' residence as a qualified person before returning to the UK

### Qualified person

The application must include evidence that the British citizen was the equivalent of a qualified person in the EEA host country during their extended right of residence, meaning, residence of longer than 3 months. British citizens who stayed in another Member State for less than 3 months are not able to sponsor family members' residence in the UK.

Presenting a registration certificate issued by the EEA host country would not, without further evidence, be sufficient to demonstrate that the British citizen was the equivalent of a qualified person there. You must consider whether the evidence provided shows that the British citizen exercised free movement rights as a:

- worker – for example employment contract, wage slips, letter from employer
- self-employed person – for example contracts, invoices, or audited accounts with bank statements, and paying tax and other deductible contributions
- self-sufficient person – for example bank statements
- student – for example a letter from the school, college or university

If they were a self-sufficient person or student, they must also provide proof they held comprehensive sickness insurance for themselves and any family members.

For these purposes, the British citizen will not have been the equivalent of a qualified person in the EEA host country for any period where they were a jobseeker.

For guidance on assessing whether the British citizen was the equivalent of a qualified person in the EEA host country, see: [EEA nationals qualified persons](#).

## Right of permanent residence

If it is claimed in the application that the British citizen had acquired the right of permanent residence, in the EEA host country, the application must include evidence of this.

Presenting an Article 19 card (permanent residence card for family members who are not nationals of the EEA host country) would not usually, without the underlying evidence showing the residence and exercise of treaty rights covering the 5 year period, be sufficient to demonstrate that the British citizen had acquired a right of permanent residence in the EEA host country.

You must consider the evidence provided in line with the guidance. See the rights of permanent residence for qualified persons section in the [Qualified persons guidance](#).

If the application does not include sufficient evidence that the British citizen exercised free movement rights in the EEA host country, you must refuse the application ([stage 6](#)).

If the application includes sufficient evidence you can go to [stage 3](#) to determine whether residence in the EEA host country was genuine.

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[Immigration \(European Economic Area\) Regulations 2016](#)  
[Free Movement of Persons Directive \(2004/38/EC\)](#)

## Stage 3: determine whether residence in the EEA host country was genuine

This section details the third stage of assessing whether the family member of a British citizen is entitled to a residence card.

The third stage of assessing the application is to consider whether the residence of the British citizen and the family member in the European Economic Area (EEA) host country was genuine.

You must have considered the application under [stage 1](#) and [stage 2](#) before moving on to stage 3.

A family member only has the right to reside in the UK with a British citizen if their residence in the EEA host country as the family member of the British citizen was genuine. 'Genuine residence' for these purposes means residence which enabled the British citizen and their family member to create or strengthen family life in the EEA host country.

Factors relevant to whether residence in the EEA host country was genuine include:

- whether the centre of the British citizen's life transferred to the EEA host country
- the length of the applicant and British citizen's joint residence in the EEA host country
- the nature and quality of the applicant and British citizen's accommodation in the EEA host country, and whether it is or was the British citizen's principal residence
- the degree of the applicant and the British citizen's integration in the EEA host country

You must conduct a rounded assessment of all relevant information to decide whether the residence was genuine.

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### **Centre of life**

Relevant factors to show the centre of the British citizen's life transferred to the EEA host country include, but are not limited to, the:

- period of residence in the EEA host country as the equivalent of a qualified person
- location of the British citizen's principal residence
- degree of integration of the British citizen in the EEA host country

### **Length of joint residence**

The applicant must provide proof that they met the definition of 'family member' and resided with the British citizen in the EEA host country while the British citizen was in a position equivalent to that of a qualified person. This might include a mortgage or tenancy agreement in both their names, or correspondence from official or otherwise credible sources, such as payslips, household bills or bank statements addressed to each of them at the same address. You should only accept that the applicant and the British citizen resided together for as long as the evidence demonstrates. For example, if they claim to have lived together for 2 years, but the evidence only covers a 3 month period, then you can only accept that they lived together for 3 months.

Generally, the longer the period of joint residence while the British citizen was in a position equivalent to that of a qualified person, the more likely it is that the residence was genuine. For example, joint residence in the EEA host country for a period of 4 years while the British citizen was a worker is more likely to have been genuine than joint residence for 4 months while the British citizen was a student.

It is important to consider the length of joint residence together with all other relevant factors to establish if the residence was genuine. You must not refuse an application solely based on a short period of joint residence if the other evidence points to the residence being genuine.

### **Principal residence**

You must consider the nature and quality of accommodation in the EEA host country and whether it was the British citizen's principal residence. For example, a mortgaged home or long-term rented accommodation is more likely to indicate genuine residence than living at a hotel or a bed and breakfast, or short stays with friends.

The principal residence is the place and country where the British citizen's life is primarily based.

## Degree of integration

When considering the degree of integration in the EEA host country, relevant questions to consider in respect of both the British citizen and the family member may include:

- if the family includes any children, were they born or did they live in the EEA host country and if so, did they attend school there and were they otherwise involved in the local community?
- are there any other family members resident in the EEA host country and were they working or studying there or otherwise involved in the local community?
- how did the family member spend their time in the EEA host country – is there evidence they worked, volunteered, studied or contributed to the community in any other ways?
- have they immersed themselves into the life and culture of the EEA host country, for example:
  - have they bought property there?
  - do they speak the language?
  - are they involved with the local community?
  - do they own a vehicle that is taxed and insured there?
  - have they registered with the local health service, a general practitioner (GP), a dentist?

The more of these factors present in a case, the more likely it is the British citizen's residence in the EEA host country was genuine.

## EEA documentation issued before 1 January 2014

For guidance on the transitional provisions that applied to family members of British citizens issued with EEA documentation before 1 January 2014, and whether you need to see additional evidence of genuine residence in those cases, see [Residence under the 2006 Regulations: Genuine residence in the EEA host country](#).

If the application does not include sufficient evidence that the residence in the EEA host country was genuine, you must either:

- write to the applicant for further information ([stage 5](#))
- refer the case to a senior caseworker to consider inviting the applicant for a credibility interview ([stage 5](#))
- refuse the application ([stage 6](#))

If you decide you need additional information, you should still go to [stage 4](#) before you go to [stage 5](#), as you may find you also need additional information relating to the purpose of the residence.

If the application includes sufficient evidence that the residence was genuine, you can go to [stage 4](#) to determine the purpose of the residence in the EEA host country.

**Related content**

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**Related external links**

[Immigration \(European Economic Area\) Regulations 2016](#)

[Free Movement of Persons Directive \(2004/38/EC\)](#)



## Stage 4: determine the purpose of the residence in the EEA host country

This section details the fourth stage of assessing whether the family member of a British citizen is entitled to a residence card.

The fourth stage of assessing the application is to consider whether the purpose of the residence in the European Economic Area (EEA) host country was to avoid any UK immigration law applying to non-EEA nationals. For example, the requirements in the UK's domestic [Immigration Rules](#) under which non-EEA family members can apply to reside in the UK with a British citizen or otherwise settled person.

You must have considered the application under [stage 1](#), [stage 2](#) and [stage 3](#) before moving on to stage 4.

Ordinarily, non-EEA family members who wish to reside in the UK with British citizen sponsors must meet the requirements of the [Immigration Rules](#). If the motivation behind the joint residence in the EEA host country was for the purpose of bringing the family member to the UK under European Union (EU) law instead of those rules, such that the residence in the EEA host country was not genuine, the applicant will not be eligible to enjoy a right to reside in the UK as the family member of a British citizen under the [Immigration \(European Economic Area\) Regulations 2016](#) (the 2016 regulations) and the residence card application will be refused. However, if one of the reasons for moving to another Member State was to avoid the requirements of the Immigration Rules but the residence in that Member State was in any case genuine (see stage 3), then the intention to avoid the requirements of the Immigration Rules is not in itself sufficient to refuse to issue a residence card.

Consideration of the 'purpose' test should include, but may not be limited to:

- the family member's immigration history – including previous applications for leave to enter or remain in the UK and whether they previously resided lawfully in the UK with the British citizen
- if the family has never made an application, the reason the family member did not to apply to join the British citizen in the UK before the British citizen moved to the EEA host country
- the timing and reason for the British citizen moving to the EEA host country
- the timing and reason for the family member moving to the EEA host country
- the timing and reason for the family unit returning to the UK

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None of these factors is determinative, and you must not refuse an application under the ‘purpose’ test solely on the basis that the family member has previously:

- made an application for leave to enter or remain in the UK
- been refused leave to enter or remain in the UK
- remained in the UK beyond the expiry of a period of leave to enter or remain
- been removed or deported from the UK

You must consider their immigration history together with all other relevant factors in [stage 3](#) to determine whether they qualify for a residence card.

For example, a non-EEA national obtains a visa to live and work in Ireland, and meets a British citizen at their place of employment. After 2 years, they begin living together and a further year later, they marry. In this example, family life was created and strengthened when the non-EEA national was already lawfully resident in the EU, independently of the British citizen’s status. The British citizen’s residence in Ireland was genuine, meeting their future spouse was incidental, and the non-EEA national could not have applied to join the British citizen in the UK before the British citizen moved to Ireland.

Contrast this with a non-EEA national who marries a British citizen while living in the UK unlawfully, then makes an application for leave to remain as the spouse of a British citizen. This application is refused under Appendix FM to the Immigration Rules because the immigration status, minimum income threshold and English language requirements are not met, and they do not qualify for leave outside the rules because there are no exceptional circumstances relating to family or private life. The couple moves to Ireland together a month after the non-EEA national is refused. They rent a flat on a short-term basis, the British citizen finds temporary work, there is minimal evidence of any integration and they return to the UK after 6 months. In this scenario the British citizen is technically exercising free movement rights in the EEA host country, but it is likely they have artificially created the necessary conditions to obtain an advantage from EU law so that the family member can reside in the UK without having to meet the requirements of the Immigration Rules.

If the application does not include sufficient evidence that the purpose of the residence in the EEA host country was not to circumvent the Immigration Rules, or any other UK immigration law applying to non-EEA nationals, you must either:

- write to the applicant for further information ([stage 5](#))
- refer the case to a senior caseworker to consider inviting the applicant for a credibility interview ([stage 5](#))
- refuse the application ([stage 6](#))

If the application includes sufficient evidence that the purpose of the residence in the EEA host country was not to avoid the Immigration Rules, you can go to [stage 6](#) to decide the application.

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[Immigration \(European Economic Area\) Regulations 2016](#)  
[Free Movement of Persons Directive \(2004/38/EC\)](#)

## Stage 5: obtain additional information if needed

This section details the fifth stage of assessing whether the family member of a British citizen is entitled to a residence card.

You only need to consider the fifth stage of assessing the application if you think there is not enough information to decide whether:

- the residence in the EEA host country was genuine
- the purpose of the residence in the EEA host country was to avoid the [Immigration Rules](#)

You do not need to consider this stage if you already have enough information either to issue, or to refuse to issue, a residence card.

You must have considered the application under [stage 1](#), [stage 2](#), [stage 3](#) and [stage 4](#) before moving on to stage 5.

### Burden and standard of proof

If deciding whether additional information is needed, the burden of proof is on you to show there is reasonable doubt that the applicant has a right to reside under the [Immigration \(European Economic Area\) Regulations 2016](#) (the 2016 regulations). If you have reasonable doubt, then the burden of proof is on the applicant to show that the conditions are met.

If deciding whether to issue or to refuse to issue a residence card, the burden of proof is on you to show to the civil law standard (the balance of probabilities) that the applicant does not have a right to reside under the [2016 regulations](#).

### Seeking additional information

If you think you need additional information to decide the application, then you can either:

- write to the applicant asking them to provide further information
- request that they attend a credibility interview

### Written requests

In general, applicants should be given 10 working days to submit the additional information requested. The deadline can be extended if the applicant provides a good reason why more time is needed. This will normally be where the requested additional information cannot be provided within 10 working days for reasons that are beyond the applicant's control.

If you write to the applicant for additional information and the applicant does not respond, you should decide the application based on available evidence. You may draw any factual inferences about a person's entitlement to a right to reside if, without good reason, a person fails to provide the additional information requested.

If you write out for further information but the response, taken together with the information provided with the application, does not show that it is more likely than not that the conditions are met, you should consider whether a credibility interview is necessary.

## Credibility interviews

Credibility interviews should be considered only if:

- any additional information required cannot be obtained by writing to the applicant
- having received the applicant's response to a written request for additional information, you still do not have enough information to decide the application

All requests for a credibility interview must be approved by a senior caseworker.

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The form submitted to the senior caseworker must:

- set out why you consider an interview is needed
- state the evidence submitted in support of the application
- list any particular areas of questioning you want the applicant to be asked

The senior caseworker will consider the evidence and decide if it is appropriate for a credibility interview to be arranged. If there is insufficient evidence they will return the case to you. You must then make a decision without a credibility interview.

If the senior caseworker agrees to recommend a credibility interview, the case will be allocated to a caseworker on the Permanent Migration Interviewing team (PMINT) who is trained to conduct credibility interviews.

Once PMINT have finished the interview process the case will be referred back to you to make a decision.

You may draw any factual inferences about a person's entitlement to a right to reside if, without good reason, a person fails to:

- provide the additional information requested
- attend an interview on at least 2 occasions, if so invited

This means that if there is other evidence to suggest that the person does not have a right to reside, combined with the failure by that person to provide evidence to substantiate their claim, it can be considered on the balance of probabilities that the person does not have a right to reside under the [2016 regulations](#).

You must not decide that a person does not have a right to reside solely on the basis that the person failed to comply with a request to provide additional information or attendance at interview. There must be additional grounds to suggest there is no right to reside. In practice these will be usually be the grounds which prompted the request for additional information or attendance at interview.

Once you have completed this stage (if applicable) you should move on to [stage 6](#) to decide the application.

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[Immigration \(European Economic Area\) Regulations 2016](#)

[Free Movement of Persons Directive \(2004/38/EC\)](#)

# Stage 6: decide the application

This section details the sixth stage of assessing whether the family member of a British citizen is entitled to a residence card.

The sixth stage of assessing the application is making the decision.

## Public policy, public security or public health

Before issuing a residence card, you must be certain there are no reasons to refuse on the grounds of public policy, public security or public health. For further information, see: European Economic Area (EEA) decisions on grounds of public policy and public security.

## Issuing a residence card

If the conditions are met to the civil law standard (the balance of probabilities), and there are no grounds of public policy, public security or public health justifying refusal, then the applicant has a right to reside under the [Immigration \(European Economic Area\) Regulations 2016](#) (the 2016 regulations) and you must issue a residence card.

## Refusing to issue a residence card

If the conditions are not met to the civil law standard (the balance of probabilities), or there are grounds of public policy, public security or public health justifying refusal, then the applicant does not have a right to reside under the [2016 regulations](#) and you must refuse to issue a residence card. You must not make a separate or additional decision under the [2016 regulations](#) based on the abuse of a right to reside.

## Right of appeal

The applicant can appeal against a decision to refuse to issue a residence card if the conditions of regulation 36 are met. For guidance see: Rights of appeal: European decisions.

Where there is a right of appeal, it is not suspensive of removal. See: [Ahmed, R \(on the application of\) v SSHD \(EEA / s.10 appeal rights: effect \(IJR\) \[2015\] UKUT 436 \(IAC\) \(24 July 2015\)](#).

## Consequences of a refused application

The applicant will be liable to removal under section 10 of the Immigration and Asylum Act 1999, on the basis that they require leave to enter or remain in the UK but do not have it. For further guidance see: Detention and removals (chapters 46 to 62).



If and when removal is enforced, the applicant will be subject to a bar on entering the UK under the [Immigration Rules](#) for 10 years. This is in accordance with [paragraph 320\(7B\) of the rules](#).

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[Immigration \(European Economic Area\) Regulations 2016](#)

[Free Movement of Persons Directive \(2004/38/EC\)](#)

[Immigration Rules](#)

# Retained rights of residence

This section tells you how to assess an application from a family member of a British citizen (or a person who was the family member of a British citizen) for a residence card in cases where the applicant claims to have retained a right of residence in the UK.

You must first consider if a person previously had a right of residence in the UK as a family member of a British citizen. You should consider whether the evidence shows they meet the requirements. See: [Assessing the application](#). If they meet the requirements, they may be able to retain a right of residence in certain circumstances. See: Free Movement Rights: retained rights of residence.

See also [Residence under the 2006 Regulations](#) for guidance on whether residence in the UK prior to 25 November 2016 was in accordance with the Immigration (European Economic Area) Regulations 2006 (the 2006 regulations).

## **Domestic violence**

If the applicant tells you they cannot provide evidence about their British citizen sponsor because their relationship broke down due to domestic violence, you must take a pragmatic approach. For more information, see: the domestic violence section in the Direct family members of EEA nationals guidance.

## **Public policy, public security or public health**

Before issuing a registration certificate or residence card based on a retained right of residence, you must be certain there are no reasons to refuse on the grounds of public policy, public security or public health. For further information, see: EEA decisions on grounds of public policy and public security.

## **Related content**

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[Immigration \(European Economic Area\) Regulations 2016](#)  
[Free Movement of Persons Directive \(2004/38/EC\)](#)

# Permanent residence

This section tells you how to assess an application from a family member of a British citizen for a document confirming their right of permanent residence.

You must first consider if a person meets the requirements showing they are a family member of a British citizen, in circumstances where the British citizen is treated as though they were an EEA national. See: [Assessing the application](#).

## **Continuous residence in the UK for 5 years**

You must make sure the applicant, their British citizen sponsor and any family members included in the application have been lawfully resident in the UK for a continuous period of 5 years.

Family members of British citizens who are claiming a right of permanent residence on the basis that the British citizen is a worker or self-employed person who has ceased activity are not required to have completed 5 years' residence in the UK.

For information on calculating the continuous residence period, see the assessing continuous residence section of: European Economic Area nationals: qualified persons.

See also [Residence under the 2006 Regulations](#) for guidance on whether residence in the UK prior to 25 November 2016 was in accordance with the Immigration (European Economic Area) Regulations 2006 (the 2006 regulations).

## **Domestic violence**

If the applicant says they cannot provide evidence about their British citizen sponsor because their relationship broke down due to domestic violence you must take a pragmatic approach. For more information, see: the domestic violence section in the Direct family members of EEA nationals guidance.

## **Public policy, public security or public health**

Before issuing a document certifying permanent residence or a permanent residence card, you must be certain there are no reasons to refuse on the grounds of public policy, public security or public health. For further information, see: EEA decisions on grounds of public policy and public security.

## **Related content**

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[Immigration \(European Economic Area\) Regulations 2016](#)  
[Free Movement of Persons Directive \(2004/38/EC\)](#)

# Residence under the 2006 Regulations

This section tells you how to consider whether residence in the UK prior to 25 November 2016 was in accordance with the Immigration (European Economic Area) Regulations 2006 (the 2006 regulations). This may be relevant when considering an application for residence documentation based on a retained right of residence or a right of permanent residence.

## Assessing whether the British citizen was a qualified person in the UK before 25 November 2016

When assessing whether the British citizen sponsor has been a worker, self-employed person, self-sufficient person, student or jobseeker in the UK, or a combination of that, you must consider the necessary adjustments to the usual conditions for being a qualified person. This is to take account of the fact that it is a British citizen (rather than an EEA national) who needs to satisfy those conditions. These are explained in Stage 1: [Assessing whether the British citizen is a qualified person](#).

## Residence cards issued to family members of British citizens

If a residence card was issued before 25 November 2016, you must accept that the British citizen was a qualified person during any time spent in the UK, while the document was valid (up to 25 November 2016.)

Where they are also relying on residence after 25 November 2016, you must ensure that both of the following points apply:

- the applicant has provided evidence showing the British citizen has been the equivalent of a qualified person in the UK since 25 November 2016
- non-British citizen family members have held comprehensive sickness insurance (CSI) during any period(s) since 25 November 2016 in which the British citizen is or was a self-sufficient person or student in the UK

Where a family member has never been issued with any EEA documentation, or where they have only been issued with a family permit before they came to the UK, you must ensure that both the following points apply:

- the applicant has provided evidence showing the British citizen has been the equivalent of a qualified person in the UK for any period in which they are or were seeking to sponsor a family member's residence in the UK under regulation 9
- non-British citizen family members have held CSI during any periods in which the British citizen is or was a self-sufficient person or student in the UK

You do not need to see any evidence that the British citizen was the equivalent of a qualified person for any residence in the UK before the Free Movement Directive came into force on 30 April 2006.

## Genuine residence in the EEA host country

Since 25 November 2016, regulation 9 has required that the residence of the British citizen and any family members in the other EEA member state are genuine.

Between 1 January 2014 and 24 November 2016, the test was whether the British citizen had transferred the centre of their life to another EEA member state. When the 'centre of life' test was introduced on 1 January 2014, transitional provisions applied.

The transitional provisions applied where the family member of the British citizen either:

- had a right of permanent residence in the UK on 31 December 2013
- had a right of residence in the UK on 31 December 2013 and either:
  - held a valid registration certificate or residence card or EEA family permit issued under the 2006 regulations
  - had made an application under the 2006 regulations for a registration certificate or residence card or EEA family permit which had not yet been determined
  - had made an application under the 2006 regulations for a registration certificate or residence card which had been refused and in relation to which an appeal under regulation 26 could be brought whilst the appellant was in the UK (excluding out-of-time appeals) or an appeal was pending

If the above criteria were met, these transitional arrangements applied until the occurrence of one of the following events:

- the 6 month validity period to enter the UK in reliance on a family permit expired and the family member had not entered the UK
- an appeal (excluding out-of-time appeals) could no longer be brought and no appeal had been brought
- any appeal against the decision to refuse to issue residence documentation was dismissed, withdrawn or abandoned
- the person ceased to be the family member or family member who had retained the right of residence
- any right of permanent residence was lost as a result of 2 or more consecutive years' absence from the UK

Where the transitional provisions applied and the family member either already held residence documentation or had an application considered under these transitional provisions and was then issued with residence documentation, you can accept that the residence of the British citizen and any family members in the other EEA member state was genuine for the purposes of regulation 9 of the 2016 regulations.

Where these transitional arrangements did not apply, or the family member had an application considered under these transitional provisions but was refused residence documentation, you must consider whether the residence of the British citizen and any family members in the other EEA member state was genuine in accordance with this guidance: [Stage 3: determine whether residence in the EEA host country was genuine](#).

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[Immigration \(European Economic Area\) Regulations 2016](#)  
[Free Movement of Persons Directive \(2004/38/EC\)](#)