

From: European Operational Policy Team

Subject: Pragmatic approach in cases where an applicant is unable to provide required evidence - revised

Date: 4 August 2011

Issue number: 10/2011 (Revised)

Purpose of Notice

1. This notice seeks to clarify the process that caseworkers must follow when a family member of an EEA national applies for documentation under the Immigration (EEA) Regulations 2006 (the Regulations) but is unable to demonstrate that they meet all of the requirements due to the exceptional circumstances of the application.

Applications on the basis of having a retained right of residence

2. Applications received on the basis that the applicant has a retained right to reside in accordance with regulation 10 of the Regulations, should be treated pragmatically where there has been a breakdown in the relationship between the applicant and their EEA national sponsor. This is because it may not be possible for the applicant to provide the required documents to support their application. Examples of this may include:
 - Where the applicant provides proof that they were the victim of domestic violence (see paragraph 8) and cannot provide evidence relating to their EEA national sponsor's nationality or treaty rights. To require them to do so in such circumstances could, otherwise put the applicant at risk.
 - Where the applicant's relationship has ended acrimoniously but they have provided evidence to show that they have made every effort to provide the required documents. For example, attempts to make contact with the EEA national sponsor during divorce proceedings.
3. Caseworkers must look at each case according to its individual merits and where they are satisfied that there is a valid reason why the applicant is unable to get the required evidence, enquiries must be made on behalf of the applicant where possible. Caseworkers must get the agreement of their senior caseworker before making any such enquiries.

Applications on the basis of being the family member of an EEA national

4. Applications received on the basis that the applicant is a family member of an EEA national but where there has been a breakdown in the relationship between the applicant and their EEA national sponsor should only be treated pragmatically in certain circumstances. This is because it may not be possible for the applicant to provide the required documents to support their application.

5. The pragmatic approach **will only** apply in the following circumstances:
 - Where the applicant provides proof that they were the victim of domestic violence (see paragraph 8) and cannot provide evidence relating to their EEA national sponsor's nationality or treaty rights. To require them to do so in such circumstances could, otherwise put the applicant at risk.
6. The pragmatic approach will **NOT** apply where there has been a breakdown in the relationship but there is no element of domestic violence involved.
7. Caseworkers must look at each case according to its individual merits and where they are satisfied that the applicant has proved they were a victim of domestic violence, enquiries must be made on behalf of the applicant where possible. Caseworkers must get the agreement of their senior caseworker before making any such enquiries.

Evidence of domestic violence

8. In order to establish a claim of domestic violence the following types of evidence are acceptable:
 - an injunction, non-molestation order or other protection order made against the EEA national sponsor (other than an ex-parte or interim order), or
 - a relevant court conviction against the EEA national, or
 - full details of a relevant police caution issued against the EEA national.

Further evidence may also be acceptable and this should be considered on a case by case basis and in accordance with the current guidance on domestic violence.

Applications for registration certificates or residence cards or permanent residence

9. Where it is agreed that a caseworker can make additional enquiries, the applicant will be expected to provide as much detail as they can about the EEA national sponsor.
 - If they cannot provide proof of the EEA national sponsor's identity, nationality or proof of relationship, then the caseworker must check existing records on G-CID to see if their identity has been established in any previous applications.
 - If they can give the name of the EEA national sponsor's employer or their place of study or existing records on G-CID hold such details, then caseworkers may contact the employer or educational establishment to enquire if the EEA national sponsor is working or studying there. The decision to contact the employer or educational establishment should be made according to the facts of the individual case and in conjunction with a SCW. No reference to Domestic Violence should be made to the employer or educational establishment where this is the reason for the enquiry.

- If the decision is made not to obtain information directly from the EEA national's employer or educational establishment, (for example because of the exceptional circumstances of the case or because the EEA national is self-employed) then caseworkers must make enquiries with Her Majesty's Revenue and Customs (HMRC) to try and gather the necessary information.
10. It is important to note there is a limit to the number of enquiries that can be made with HMRC each month. Therefore making such enquiries must only be done when the caseworker is sure that the applicant cannot get the required evidence.
 11. If the quota of checks has already been reached for the month the caseworker must check the target date for the case to assess if the decision can be postponed until the following month. If the target date will expire before the next month begins, the caseworker must speak to their senior caseworker to discuss what action to take.
 12. Checks can be made with HMRC to gather the following information:
 - If the EEA national was working at the date the relationship was terminated.
 - If the EEA national was self-employed at the date the relationship was terminated.
 - Past details of employment/self employment for permanent residence applications.
 13. You must refer the details of the applicant to your senior caseworker who will then contact HMRC to make these checks.
 14. It will not be possible to make enquiries on behalf of the applicant if the EEA national sponsor:
 - is exercising treaty rights as a self-sufficient person, or
 - is studying but the applicant cannot state where, or
 - is required to have comprehensive sickness insurance and no previous application has been made for a registration certificate.
 15. In such cases and where enquiries made on behalf of the applicant have not provided the information needed, caseworkers must discuss the case with their senior caseworker who will then decide if discretion should be applied based on the particular circumstances of the case and the level of evidence provided.
 16. If discretion is not to be applied then the application must be refused.
 17. Any policy enquiries on this Notice should be addressed to <redacted: section 40(2)> or <redacted: section 40(2)>.

<Redacted: section 40(2)>
Head of European and Nationality Policy
4 August 2011