

Mr Tyson Hepple CB
Director General
Immigration Enforcement
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Croydon
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Via email only: Tyson.Hepple@homeoffice.gov.uk

29 July 2021

Dear Mr Hepple,

Re: EU Settlement Scheme Paper Applications

I write to obtain clarification regarding applications made under the EU Settlement Scheme.

Acknowledgment of paper applications

We have recently noticed delays on the part of the Home Office in acknowledging paper applications submitted under the EU Settlement Scheme. Where bail applications are made by EUSS applicants, the Home Office has adopted the position that there is no evidence that the applicant has made an EUSS application, arguing that in the circumstances the individuals can be removed.

Please can you therefore clarify or assist with regards to the following:

- (i) Please can you immediately ensure that EUSS paper application forms are acknowledged immediately upon receipt? If this is not possible, please can you confirm the reason for this and the timescales within which acknowledgement of receipt can be provided?
- (ii) Please can you ensure that Home Office Presenting Officers are immediately informed of the steps they must take to verify a claim that an EUSS application has been made? Please also advise us of the policy and steps they are expected to take in this regard.

We are extremely concerned that the delays being faced by EEA nationals with the acknowledgment of their applications is leading to extended and unnecessary detention



under immigration powers. This is inconsistent with the letter and spirit of the EU-UK Withdrawal Agreement. As such, it must be addressed and rectified as a matter of urgency.

An EUSS application is an application to verify the residence rights of EEA Nationals in the UK. As such it is a barrier to removal and therefore an important component in an application for immigration bail, and indeed when considering the necessity, and indeed the lawfulness of maintaining the detention of EEA nationals. Applications under the EU Settlement scheme are protected by the safeguards contained in Chapter VI of Directive 2004/38/EC in accordance with Article 21 of the Withdrawal Agreement. To assert that there is no evidence that an EUSS application has even been made risks misleading the First-tier Tribunal as to an Applicant's removability. The uncertainty invited by the Home Office therefore has very serious consequences, namely a refusal of bail and a deprivation of liberty made on an erroneous, and therefore unlawful basis.

EUSS applications, whether complete or not must be acknowledged immediately upon receipt; any other approach would place an unfair burden on the applicant to do so, a consideration which is heightened by the fact that it is more vulnerable and marginalised groups who have had to apply using paper forms. This position is supported by Article 18(1)(e) of the Withdrawal Agreement which requires the United Kingdom to ensure that any administrative procedures for applications are "*smooth, transparent and simple, and that any unnecessary administrative burdens are avoided.*"

Please therefore confirm that:

- (i) EUSS paper applications will be acknowledged upon receipt going forward.
- (ii) That the acknowledgment will be communicated in writing to the applicant immediately.
- (iii) That when required to verify whether an EUSS application has been made, the Home Office and its representatives will be able to do so.

Incomplete applications

We are also aware that those submitting paper application forms may not always have access to the requisite accompanying documentation such as copies of ID or passport-style photographs. Often this is because the Home Office retains detainees' identity documents and the prison or detention centre are unable to arrange for passport-style photographs to be taken. In order to avoid such EEA nationals from losing their rights under the Withdrawal Agreement, please could you therefore also:

- (i) Confirm that an incomplete application will not make them susceptible to removal.
- (ii) That they will be given a reasonable opportunity to provide missing information/evidence.
- (iii) That those held in prisons and Immigration Removal Centres will be provided with assistance to produce identity documents such as photographs.



Availability of paper application forms

We remain concerned that paper applications for the EU Settlement Scheme are now not available online and that individuals are instead required to request them from the Resolution Centre. This is not viable or practical particularly for those detained in prisons who have limited opportunities and resources to make external calls. As your policy titled, 'EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members' (Version 13.0, 20 July 2021) recognises that late applications are permitted and that being in prison may constitute reasonable grounds for making a late application (p.43), it is unclear as to why this additional obstacle has been re-instituted. Given that this issue has an impact on a person's ability to lodge an application at the earliest opportunity and that any delay can have a bearing on the necessity and the length of a person's detention, and therefore also upon the lawfulness of continued detention, please could you ensure that paper application forms are immediately made available online, and that they are made accessible to those in prisons?

Please note that to ensure that the First-tier Tribunal is full apprised of the situation surrounding delayed acknowledgement of EUSS applications, a copy of this letter will be provided to support bail applications by EEA nationals in appropriate cases.

I look forward to hearing from you as soon as possible.

Yours sincerely



Pierre Makhoul
Legal Director
Bail for Immigration Detainees

