

EEA nationals and the NRM

Carita Thomas, ATLEU

ATLEU

Anti Trafficking and Labour Exploitation Unit



EEA nationals

If an individual is from one of these countries then they can use European free movement rules in the UK:

- Austria, Belgium, Bulgaria, Croatia, Republic of Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lichtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland.

EEA nationals and the NRM

- The Competent Authority that deals with the cases of European nationals (making reasonable and conclusive grounds decisions) is usually the National Crime Agency's

Modern Slavery Human Trafficking Unit (MSHTU)

- Contact details:
- nrm@nca.x.gsi.gov.uk
- [Fax to 0870 496 5534](tel:08704965534)

EEA nationals – rights under EEA law

- Applications can be made to confirm rights under European law (it helps to have a document to show authorities although it is not obligatory)
- If they are working, job-seeking, self employed, studying or self sufficient they can apply for a Home Office document to confirm their rights as an EEA national or their permanent residence rights
- Time in exploitation can be used to show you were exercising European rights eg as a worker (proof could be from a Competent Authority decision or DWP/benefits/employment Tribunal)
- Brexit ... watch this space!

Residence permits? Yes!

- They should automatically be considered for this after a positive CG
- Or they can make a discrete application
- Legal aid is available to assist someone with a positive RG or CG with an application to confirm European rights or apply for a residence permit
- If you have a residence permit you don't have to satisfy the GPOW test
- EEA nationals who are victims of modern slavery can be granted a residence permit if they are not able to use their European rights of free movement (i.e. unable to work, be self-employed, self-sufficient, or study).

Residence permits (continued)

Common barriers to finding stable employment:

- Mental health needs
- Language
- They are still dealing with the effects of involvement in a criminal case
- Local labour market will only support temporary jobs.

Residence permits (continued)

An EEA national must still show a residence permit if:

- It's required because they are helping in a criminal case
- It would be necessary because of their personal situation
- They need support for an appropriate time after participation in criminal proceedings
- It's in their best interests (as a child)
- They are pursuing a compensation case against traffickers (and we would argue the state) that requires their presence here.

Residence permits (continued)

- Supporting evidence is vital – support workers play a hugely important role!
- A letter from a support worker can explain why this client needs the safety net of a residence permit, for example, setting out problems they have had getting work, risk of re-exploitation if they do not have stable support, how housing/benefit issues could prevent them engaging with ongoing cases that are important for long term recovery like a compensation claim.

How to apply

- Unfortunately the guidance for Competent Authorities at the time of writing does not have up to date references for the application forms that a person needs to use for a residence permit.
- An application for/to extend a residence permit (where a person has not claimed asylum) should be made on Form FLR (HRO).
- An application for/to extend a residence permit that was made to a person who was refused asylum first is made on Form (DL).

How to apply (continued)

Supporting evidence:

- Two passport photos
- Original passports/national ID card
- Original biometric residence permit
- Letter explaining why claiming (eg from support worker and lawyer)
- Advisable to include copy of positive CG decision if you have it
- Last three months' proof of means of financial support.

How to apply

- The application fee for an application made on Form FLR(HR) or FLR(DL) is £993 (from 06.04.17)
- Person with a positive CG on 1st application for leave for Trafficking Convention reason: No fee
- Person with a positive CG asking for further leave for reason under Trafficking Convention (where not yet had 30 months of leave on this basis): No fee
- Person applying for an extension based on the Trafficking Convention who has had 30 months or more of leave (we would count s.3C leave too): Fee applies UNLESS at the time of making the application the person appears to be destitute
- Dependants – No fee if main applicant does not pay.
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How to apply (continued)

Immigration Health Surcharge:

- A victim of modern slavery does not have to pay the IHS, if they are applying for further leave for a Trafficking Convention reason.
- This only applies when the victim has a positive conclusive grounds decision, not when they have a determination by a court/tribunal that they are a victim (although this could be a ground of challenge if your client cannot afford to pay the IHS) otherwise make fee exemption arguments.

EEA nationals who are VOTs – what else?

- Asylum claim? Worth considering
- Victims may express fears of return for example if traffickers and associates are back in their country of origin and are making threats (eg because victim escaped or has supported a prosecution against them)
- Home Office will treat claim as ‘inadmissible’ unless the applicant shows ‘exceptional circumstances’ which require the application to be submitted for full consideration.

EEA nationals (asylum continued)

- What are exceptional circumstances?

The Home Office says these can include:

- Home country has derogated from ECHR
- A procedure has begun in the EU to say there is a clear risk of a serious breach/or a decision has been made about a serious and persistent breach of fundamental EU values (eg respect for human rights, human dignity, freedom).

Thank you for your time

Please feel welcome to contact me:

carita@atleu.org.uk



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