

JUST IMMIGRATION SOLICITORS

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EEA nationals applying for British Citizenship: This note examines the requirements for naturalisation and some of the potential pitfalls.

What are the requirements?

If you are not married to, or the civil partner of, a British Citizen.

You will be applying for naturalisation to become a British Citizen under Section 6 (1) of the British Nationality Act 1981. The requirements are:

- i) You must have been physically present in England, Wales, Scotland, Northern Ireland, the Isle of Man or the Channel Islands on the day, 5 years before the application is received by the Home Office;
- ii) You must not have had more than 450 days outside the UK in the 5 year period before making the application;
- iii) You must not have had more than 90 days outside the UK in the 12 month period before making the application;
- iv) You must be free from immigration time restrictions on the date of application and have been free from immigration time restrictions for 12 month period before making the application; and

- v) You must not have been in breach of the immigration laws in the 5 year period before making the application.

If you are married to, or the civil partner of, a British Citizen

You will be making an application under Section 6 (2) of the British Nationality Act 1981. The requirements are:

- i) You must have been physically present in England, Wales, Scotland, Northern Ireland , the Isle of Man or the Channel Islands on the day, 3 years before the application is received by the Home Office;
- ii) You must not have had more than 270 days outside the UK in the 3 year period before making the application;
- iii) You must not have had more than 90 days outside the UK in the 12 month period before making the application;
- iv) You must not have been in breach of the immigration laws in the 3 year period before making the application; and
- v) You must be married to, or the civil partner of, a British Citizen on the date of application.

Other requirements for both Section 6 (1) or 6 (2) Applications:

For both types of applications:

- a) You must be of good character;

- b) You must fulfil the English Language and Life in the UK test requirements; and
- c) You must be aged 18 or over and be of sound mind.

Free From Immigration Time Restrictions.

As an EEA national, you can show that you are free from immigration time restrictions by:

- a) Having a permanent residence document issued under the EEA Regulations. This means a document certifying permanent residence, or
- b) Having indefinite leave to enter or remain in the UK granted under the EU Settlement Scheme.

Showing 5 or 3 years lawful residence in the UK before making the application for EEA nationals who were issued with a document certifying permanent residence.

EEA nationals who were issued with documents certifying permanent residence are deemed to be lawfully present in the UK for the 5 or 3 years before they were issued. They are also deemed to have remained lawfully in the UK since then, unless they have lost their permanent residence by being out of the UK for more than 2 years.

Potential Pitfalls

Showing 5 or 3 years lawful residence in the UK before making the application for those granted indefinite leave to remain under the EU Settlement Scheme.

EEA nationals who are granted indefinite leave to remain / settled status under the EU settlement scheme are not deemed to be

lawfully resident in the UK in the 3 or 5 years before being granted indefinite leave to remain / settled status under the EU Settlement Scheme. They must in addition demonstrate that before they were granted indefinite leave to remain / settled status, they were residing in the UK lawfully and exercising treaty rights as a:

- i) Worker,
- ii) Student,
- iii) Self-employed person,
- iv) Self-sufficient person,
- v) Retired person, or
- vi) Person who was incapacitated.

This could be problematic for EEA nationals residing in the UK as students or self-sufficient persons without private medical insurance before they were granted indefinite leave to remain / settled status under the EU Settlement Scheme.

Under the EEA Regulations and Directive 2004/38, an EEA national can only claim to be lawfully residing in the UK as a student or a self-sufficient person if they are also in possession of comprehensive sickness insurance / private medical insurance during the period of their residence.

Accordingly, EEA nationals residing in the UK as a student or a self-sufficient person without comprehensive medical insurance / private medical insurance will be unable to demonstrate that they were residing lawfully into the UK before they were granted indefinite leave to remain under the EU Settlement Scheme.

Another group of EEA nationals who may be caught by this are those who have resided in the UK for a substantial period of time but are not able to demonstrate the exercise of treaty rights before they

were granted indefinite leave to remain / settled status under the EU settlement scheme.

What to do if you are unable to demonstrate lawful residence before the grant of indefinite leave to remain under the EU Settlement Scheme?

Unfortunately, there is no easy answer to this. Unless the Home Office policy changes, the way forward is to 'clock up' the 3 or 5 years lawful residence again from the grant of pre-settled / settled status.

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If you would like advice or assistance on any of the issues raised in this note/article, please contact Agnes Lai by email at

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