

Neil Forshaw
Head of Euro and Settlement, and EU Settled Status Customer Resolution Centre
Visa and Citizenship Operations
UK Visas and Immigration
Home Office

By email only to:

[REDACTED]

29/03/2023

Dear Mr Forshaw,

We are writing in relation to an issue that has come up frequently in our work helping vulnerable individuals apply under the EU Settlement Scheme.

As you will be aware, individuals may hold a certain nationality without necessarily having a passport or an ID card issued to them by the relevant national authority. Holding a passport and holding a nationality are separate and distinct issues. A passport is in fact a means through which someone *proves* their nationality. One can hold a certain nationality without having a passport to show for it.

It hence follows that if a person is issued a first passport or ID card later in life, it does not necessarily mean that the person did not hold their nationality since birth.

We appreciate how the EU Settlement Scheme and its Guidance allows for applications to be made by people who don't have a valid passport or ID (provided that they produce alternative forms of identity and nationality) and thus seemingly takes into account the points mentioned above.

We understand that the rules relating to acquisition of nationality at birth and by descent may vary amongst EEA and non-EEA countries and we are not suggesting that a one-size-fits-all approach can be used for all situations, nor that the decision maker should be applying foreign nationality law.

Nevertheless, **we are increasingly encountering issues with regards to how the distinction between holding a passport and holding a nationality is handled in practice by EUSS caseworkers.**

Applicants under the Scheme are **frequently being contacted by Home Office EUSS caseworkers and asked to provide further evidence of their EEA nationality despite having**

already provided evidence of this in the form of a passport or ID card or accepted alternative forms of evidence and nationality as part of their application.

In particular, this is happening very often in respect of children whose first passport has been issued later in life and with passports issued or renewed around or after the end of December 2020.

We are concerned about this issue for the following reasons:

1. These requests unnecessarily place the burden on the applicant to contact their embassy or national consulate, and often include a 14-day deadline to reply which is very challenging or impossible for applicants to meet.

Considering the internal cooperation with embassies which can be activated by Home Office EUSS caseworkers as provided by the Guidance (EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members Version 18.0) at page 65:

Where you have followed this guidance and all other steps to ascertain an applicant's identity and nationality have been exhausted, you may refer to the embassy, consulate or high commission in the UK of the applicant's claimed country of origin seeking confirmation as to any records held about the claimed identity and nationality.

We struggle to understand why, if checks can be carried out with the relevant embassy or consulate by the Home Office, the burden is placed on an applicant to provide evidence of their nationality which covers the period preceding the issuance of their current residence document. In some cases, requests have even been made for the applicant to provide evidence of their nationality since birth, i.e. evidence of their nationality from a time period preceding their arrival in the UK, which should be irrelevant to their EUSS application.

Further, it does not appear that Home Office caseworkers review the Home Office's own, existing internal records of evidence of an applicant's nationality. In some cases, we have worked with applicants who have previously submitted evidence of their nationality in support of a prior application for a residence card during their qualifying period of residence. In such cases, where the applicant no longer has access to those documents, the burden should not be placed solely on the applicant to evidence their nationality for the duration of their qualifying period of residence. A caseworker could more quickly and efficiently review internal Home Office records relating to the applicant, to find records that show their EEA passport or ID card has been sent to the Home Office in the past.

We are also concerned that instead of contacting the relevant embassy or consulate themselves, the Home Office is providing a 14-day deadline for applicants to respond with further evidence.

We understand that this is the standard timeframe used when the Home Office requests further evidence of residence or relationship status in EUSS applications. However, while residence evidence such as bank statements may be available to an applicant within this timeframe, requesting further confirmation of one's nationality often takes more time. Making contact and receiving a response from the relevant embassy or national authority can take up significantly more time than 14 days in our experience.

- 2. These requests may lead to an unnecessary and at times incorrect assessment by the EUSS caseworker of the applicant's nationality, outside of the scope of their expertise.**

We understand that the Home Office is not able to substitute their judgement for that of the domestic authorities in ascertaining whether an applicant is indeed an EEA national and may for this reason request further information.

We are concerned that examples seen of decision making and requests made by EUSS caseworkers may indicate that unnecessary assessments are made by EUSS caseworkers on the applicant's nationality, outside of the scope of their expertise.

We have assisted several applicants, mostly children, where multiple exchanges with the Home Office EUSS caseworker had to be made to establish the child's EEA nationality, pointing the caseworker to already published information available to them and to the public on the relevant embassy website. Without the representation of a lawyer, we feel it would be very likely that the applicants would have had their applications incorrectly refused.

On one occasion, we have seen the decision maker incorrectly consider the date of issue of a passport as the date of acquisition of nationality without activating any confirmation or correspondence with the relevant embassy and instead contacting an unrepresented individual who failed to understand the request and the implication of it. We were later instructed on this matter, and we provided confirmation from an embassy advisor regarding the child's entitlement to EEA nationality since birth as part of a request for reconsideration, but this was disregarded by the decision maker. The matter is currently under review, and we hope this will be resolved soon.

- 3. Based on information gathered, and our direct experience, we are further concerned that the current approach may have a disproportionate impact on certain groups of applicants.**

We are looking to monitor the frequency of requests made with regards to specific nationalities and ethnicities to understand if these requests for further information disproportionately impact a certain category of applicants.

For this reason, we have submitted a disclosure request in line with the Freedom of Information Act (FOIA) for the data the Home Office holds with regard to those

applications where a request for further information was sent to the applicant with regard to their nationality (e.g. to confirm they hold such nationality, to confirm for how long they held their nationality, to confirm they held that nationality since birth) and the applicant's nationality, gender and ethnicity.

For the reasons listed above, we are increasingly concerned about how the distinction between holding a passport and holding a nationality is being handled by EUSS caseworkers.

We cannot find any mention in the current published Guidance ([EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members Version 18.0](#)) of an internal policy or guidance given to caseworkers in cases where they believe they need further information about an applicant's nationality beside page 65 as highlighted above.

We are writing to receive clarification on the policy used by Home Office EUSS caseworkers on the subject.

We would be grateful if you could share with us any existing policy and/or training given to caseworkers which addresses the distinction between holding a passport and holding a nationality and the checks and steps a caseworker must go through if issues arise with regards to an applicant's nationality.

If this does not exist, we would be grateful if you could rectify the above concerns and confirm that caseworkers will:

1. Receive adequate training on this issue so that they fully understand the distinction between being issued a passport and holding a nationality;
2. Contact embassies and consulates directly in cases where they absolutely require further evidence of a person's nationality, or review their own internal records where an applicant instructs they have previously provided evidence of their ID to the Home Office; and
3. If, in exceptional cases, they do need to contact the applicant directly to ask for further evidence - give them a more reasonable timeframe to respond.

We also look forward to receiving the data with regard to those applications where a request for further information was sent to the applicant with regard to their nationality (e.g. to confirm they hold such nationality, to confirm for how long they held their nationality, to confirm they held that nationality since birth) and the applicant's nationality, gender and ethnicity as indicated in our FOI request submitted online.

We request that you provide a full response to this matter as soon as possible, and in any event, no later than 14th April 2023.

We would be grateful for your confirmation of the Home Office's position in relation to this issue and look forward to hearing from you.

Yours sincerely,



Bianca Valperga, Legal Policy Officer, Here for Good

Hannah Smith, Solicitor & Legal Project Manager, the AIRE Centre

Co-signed by: Indre Lechtimiakyte, Legal and Migrant Support Manager, Samphire; Natalia Byer, Programme Manager - Direct Services, Polish Migrants Organise for Change (POMOC); Daniela Quinatoa, EUSS Applications Officer, Latin American House; Andreea Dumitrache, Interim Co-CEO of the3million; Gloria Saffrey, Director and Jose Kalanda Senior Advice Worker CARIS Haringey; Denisa Gannon, Senior EUSS adviser and solicitor; New Europeans, UK.