

Wayne Pearsall
request-148907-3e9740e3@whatdotheyknow.com

(FOI)Home Office Ref: 26321

Date: 06 March 2013

Dear Mr. Pearsall,

Thank you for your e-mail of 7 February, in which you ask for information relating to certificates of application (CoAs). Part of your request is being handled as a request for information under the Freedom of Information Act 2000, and part of your request is being handled as a routine enquiry as it does not request specific information held by the UK Border Agency.

You have requested the following information;

“All information you have available in reference to a Certificate of Application.

The information requested is (but not entirely limited to):

- 1) all guidance issued to UKBA staff for the issuing of a COA.
- 2) what a COA actually represents
- 3) would an overstayer of a Visa still be issued with a COA
- 4) does a COA confirm the right of an applicant to work
- 5) if an overstayer is issued with a COA under EEA law, would that person then be allowed to seek employment
- 6) How many COA's issued have confirmed the right to work of the applicant
- 7) How many COA's have been unable to confirm the right to work of the applicant
- 8) How many COA's have refused the applicant outright the right to work
- 9) if any of 6 - 8 have been appealed and reissued altering the status, please provide these figures separately (IE: six COA's were originally issued without confirming the right, this was altered to confirm the right to work ETC)

I would like the information to disclose ALL issues of COA from the very first certificate issued. Should this cause problems with costings, then I would revise

my request to cover the last two full years (I will allow you to choose either Annual, or Financial, which ever is easier for yourselves, but please state the dates represented)

and also,

10) please provide guidance issued to the European office staff for the issue of whether to confirm a persons right to work or not.

- Which persons have their right to work confirmed
- which persons right to work cannot be confirmed
- which persons right to work are refused ETC.”

You have also referred to a request for information made by another individual and have quoted that person’s request in your email. Please be advised that this response will deal with your enquiry only and we will not correspond with you in respect of a request made by another individual. It is open to the individual concerned to contact the UK Border Agency directly if they do not consider that their request has been dealt with satisfactorily.

Questions 1, 6, 7, 8, 9, and 10 of your request have been treated as requests for information under the Freedom of Information Act.

In question 1, you have requested guidance issued to UK Border Agency staff on the subject of issuing certificates of application. I can confirm that the UK Border Agency holds an internal ‘desk guide’ for UK Border Agency staff for use in deciding whether to issue a CoA, and whether any CoA issued will confirm a right to reside and work in the UK while awaiting a decision (a ‘full’ CoA) or simply a right to reside (a ‘short’ CoA). I have included this document at Annex A of this response.

Questions 6 to 9 request information regarding CoAs issued by the UK Border Agency and statistics regarding the content of CoAs issued. Under section 12 of the Act, the Home Office is not obliged to comply with an information request where to do so would exceed the cost limit.

We have estimated that the cost of meeting your request would exceed the cost limit of £600 specified in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004. We are therefore unable to comply with it. This is because details around the issue and content of CoAs are not held in a reportable form in the UK Border Agency database and therefore we would have to search through each record manually to obtain the information.

The £600 limit is based on work being carried out at a rate of £25 per hour, which equates to 24 hours of work per request. The cost of locating, retrieving and extracting information and preparing the response can be included in the costs for these purposes. The costs do not include considering whether any information is exempt from disclosure, overheads such as heating or lighting, or items such as photocopying or postage

In this case, I am unable to advise of a way in which you could refine this part of your request in order to bring it within the cost limit for a freedom of information request, as even if your request were limited to a shorter period of time as you have suggested, this would still almost certainly exceed the cost limit.

Furthermore, question 9 of your request refers to appeals against a decision to issue a 'short' CoA. It should be noted that the issuing of a 'full' or 'short' CoA does not constitute a decision or outcome on an application and as such does not attract a right of appeal.

In question 10 of your request, you have asked for 'guidance issued to the European office staff for the issue of whether to confirm a persons right to work or not.' I have provided the desk top guide for CoAs in Annex A of this letter as set out in my response to question 1 of your request. I can confirm that this is all the guidance held by the UK Border Agency which advises on whether a CoA will confirm a right of a person to take employment while their application for a document confirming a right of residence under the Immigration (European Economic Area) Regulations 2006 (as amended) is under consideration.

Questions 2, 3, 4 and 5 of your request are routine enquiries and have therefore not been dealt with under the Freedom of Information Act. The UK Border Agency's response to your routine enquiries is set out at Annex B of this letter.

If you are dissatisfied with this response you may request an independent internal review of our handling of your request by submitting a complaint within two months to the address below, quoting reference FOI 26321. If you ask for an internal review, it would be helpful if you could say why you are dissatisfied with the response.

Information Access Team
Home Office
Ground Floor, Seacole Building
2 Marsham Street
London SW1P 4DF
e-mail: FOIRequests@homeoffice.gsi.gov.uk

As part of any internal review the Department's handling of your information request will be reassessed by staff who were not involved in providing you with this response. If you remain dissatisfied after this internal review, you would have a right of complaint to the Information Commissioner as established by section 50 of the Freedom of Information Act.

Yours sincerely

European Operational Policy Team
UK Border Agency

Annex A of FOI Response 26321 – Desk Top Guide for Issuing CoAs

DESK TOP GUIDE FOR ISSUING COAs

NB. If an application mentions 'Zambrano' refer immediately to Team Leader of NWEuro9 - DO NOT issue a COA.

Check pouch contains:

Evidence of valid ID for applicant **and** sponsor

Current national passport / EEA Identity card

- NB EEA Alien's passports are NOT evidence of EEA nationality

Evidence of relationship

Marriage certificates, birth certificates, adoption certificates-Only direct family members are entitled to a full COA ie spouse/civil partner, children/ parents, grand-parents of the EEA national or of his/her spouse / civil partner.

-This includes stepchildren or adopted children provided that the adoption is recognised by the UK, and step parents.

-In the case of **EEA national students**, only their spouse / civil partner and dependent children are entitled to a full COA.

Evidence of exercising Treaty Rights

As a worker - pay slips, P60's etc,

As a student - letter from college, sickness insurance or EHIC card

As a self employed person - HMRC letter, Tax returns, advertising

As a self -sufficient person - bank statements, sickness insurance or EHIC card

If **all** three are present issue **full COA**

If only some of the above are present issue a **short COA**

Minute CID notes to say one of the following:

Full COA issued to representative

Full COA issued to applicant

Short COA issued to representative

Short COA issued to applicant

Annex B of FOI 26321 – response to routine enquiries.

2) what a COA actually represents

Where a non-EEA national applies for a document as the family member of an EEA national confirming a right of residence under the Immigration (European Economic Area) Regulations 2006 ('the Regulations') a decision will be made on their application within 6 months of the date of application.

The UK Border Agency issues a Certificate of Application or 'CoA' to applicants who have submitted a valid application. Depending on the level of evidence submitted, the applicant will be issued with either a 'full' CoA confirming a right to work in the UK while their application is outstanding) or a 'short' CoA (confirming receipt of the application only).

Short CoAs are also issued to persons who are applying as an 'extended family member', as such persons do not have an automatic right of residence in the UK and therefore will not have a right to take employment until such a time as they are issued with a document under the Regulations.

A CoA does not represent confirmation that an applicant has a right of residence under EU law and does not constitute a decision or outcome on that application.

3) would an overstayer of a Visa still be issued with a COA?

A person who has overstayed a previous grant of leave to enter or remain under the Immigration Rules and who has subsequently acquired a right of residence under the Regulations will be issued a CoA where they meet the relevant evidence requirements regardless of their previous immigration status.

4) does a COA confirm the right of an applicant to work?

This will depend on whether the CoA issued is a full or short CoA. As set out above, a full CoA provides evidence to prospective employers that the applicant may take employment while the application is under consideration, whereas a short CoA does not.

5) if an overstayer is issued with a COA under EEA law, would that person then be allowed to seek employment?

A person who is issued with a full CoA confirming their right to take employment while their application is under consideration will be able to seek employment while they are awaiting a decision on their application, regardless of their previous immigration status. A person who is issued with a short certificate of application may not take employment in the UK until such a time as they are issued with a document confirming a right of residence under the Regulations.