

From: Free Movement Operational Policy Team

Subject: Clarification of the definition of an EEA national

Date: 27 July 2015

Issue number: 07/2015

Purpose of notice

1. To provide clarification in regards to whether an EEA national who later becomes naturalised as a British citizen can still be considered as an EEA national for the purposes of the transitional measures set out in paragraph 2 of Schedule 3 of the Immigration (European Economic Area) (Amendment) Regulations 2012 ('the 2012 Regulations'). This notice should be read alongside EOPN 09/2012.

Background

2. Following the Court of Justice of the European Union ('ECJ') judgment in *McCarthy* (C434/09), the definition of an EEA national in regulation 2 was amended on 16th July 2012 to preclude dual British citizens/EEA nationals from benefitting from Directive 2004/38/EC ('the Directive') and therefore also to preclude their family members from relying upon free movement rights.
3. In order not to unfairly prejudice the position of persons who have acted in reliance on the previous definition of an EEA national, transitional arrangements were made. These transitional arrangements are set out in paragraph 2 of Schedule 3 of the 2012 Regulations. Full details of the transitional arrangements and how they are applied can be found in EOPN 09/2012.

Applying the transitional arrangements to the family members of EEA nationals who later become British citizens

4. Paragraph 2(1) of Schedule 3 of the 2012 Regulations states:

'Where the right of a family member ("F") to be admitted to, or reside in, the United Kingdom pursuant to the 2006 Regulations depends on the fact that a person ("P") is an EEA national, P will, notwithstanding the effect of paragraph 1(d) of Schedule 1 to these Regulations, continue to be regarded as an EEA national for the purpose of the 2006 Regulations where the criteria in subparagraphs (2), (3) or (4) are met and for as long as they remain satisfied in accordance with subparagraph (5).'

This paragraph, whilst drafted to provide transitional arrangements for the family members of dual EEA/British citizens following the *McCarthy* judgment, also applies to family members where the sponsor was an EEA national at time of the

changes to the Regulations, but who then later acquires British citizenship. In such cases, the family member will continue to benefit from the Regulations and can acquire permanent residence as long as they remain the family member of that EEA/British citizen (i.e they remain married or in a civil partnership).

Example case

5. Mrs X holds a residence card which was obtained on 1st January 2010 on the basis that she was married to a French national, Mr X. On 1st January 2015, Mrs X applies for permanent residence. By that time, her French husband has also naturalised as a British citizen in the UK and holds dual French/British citizenship. *Do the transitional arrangements apply in this case? Has Mrs X ceased to be a family member of an EEA national?*

Answer:

In this case, Mrs X meets the criteria in paragraph 2(3) of Schedule 3 of the Regulations, and did, as required by 2(3)(a) have a right to reside on 16 July 2012 as a family member (spouse) of an EEA national and held a valid residence card. The fact that Mr X has since naturalised as a British citizen, does not prevent his spouse continuing to benefit from the transitional arrangements in the Regulations.

Paragraph 2(5)(d) of Schedule 3 of the 2012 Regulations states that the transitional arrangements will continue to apply until:

“the date on which F ceases to be the family member of an EEA national”;

This is intended to address a situation where the relationship is terminated and not a situation where the sponsor has acquired British citizenship. Therefore, as long as Mrs X has not ceased to be a family member of an EEA national through divorce, she can acquire permanent residence following five years continuous residence in the UK in accordance with the Regulations.

To note: It remains the position that the transitional arrangements do not apply in circumstances where a dual EEA/British citizen marries their family member after the transitional arrangements have ended. These cases will continue to fall outside the scope of the Regulations.

Contact

6. For any enquiries on this subject, please email the Free Movement Operational Policy Team mailbox at the following address in the first instance: [email address redacted]

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