

Dealing with EEA Nationals & their family members

6.6 Family members with Article 10 residence cards issued by other EEA Member States

Following the judgment of the Court of Justice of the European Union (CJEU) in the case of McCarthy (C-202/13), the UK will now accept valid, genuine residence cards issued by other EEA Member States under Article 10 of the Free Movement Directive (2004/38/EC), as evidence that the holder is exempt from the requirement to hold an EEA family permit. Permanent residence cards issued under Article 20 of the Directive are also acceptable for this purpose.

Amendments to the Immigration (European Economic Area) Regulations 2006 ('the EEA Regulations') which implement this judgment come into effect on 6 April 2015.

Border Force Officers must note that an exemption from the EEA family permit requirement does not mean that the passenger necessarily has a right of admission under the EEA Regulations. Officers should give thorough examination of the claim to a right of admission as set out in section 6.6.3 below.

6.6.1 Acceptable documents

Residence cards are issued to non-EEA family members of EEA nationals where the EEA national is residing in a Member State other than that of which they are a national and where they are exercising Treaty rights (or have acquired a right of permanent residence under EU law). For example, a residence card would be issued under EU law by the Spanish authorities to the non-EEA spouse of a French national who is living and working in Spain.

Such a document will only be acceptable where it:

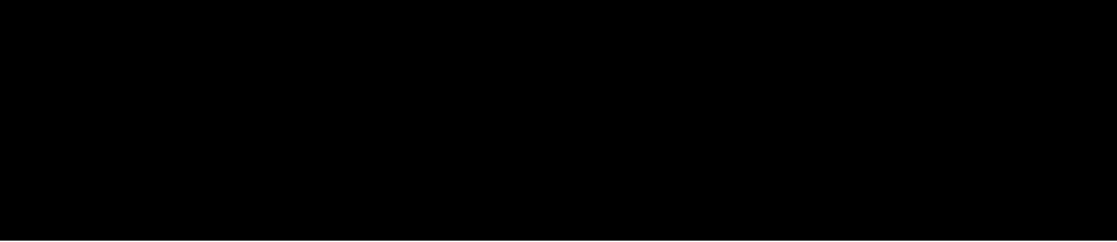
- is valid
- is genuine
- features the wording 'Residence Card of a Family Member of a Union Citizen' or 'Permanent Residence Card of a Family Member of a Union Citizen', which is clearly distinguishable and can be understood.
- is presented alongside a valid national passport

Examples of residence documentation issued by other EEA Member States can be found here:



(However, it should be noted that in many cases this web-site fails to identify whether a card has been issued in accordance with Article 10 of the Free Movement Directive.)

You can find information on specimen and forged documents for different countries on the Country Information and Guidance page on Horizon:



Where a non-EEA national presents a valid, genuine residence card or permanent residence card issued under the Free Movement Directive by another EEA Member State, Border Force Officers should take this into account as evidence that the non-EEA national is the family member of an EEA national (see paragraphs below).

Where a Border Force Officer is not satisfied that the document presented is a Residence Card of a Family Member of a Union Citizen issued under Article 10 of the Directive (or a Permanent Residence Card issued under Article 20 of the Directive), they must refuse to accept the document as evidence that the holder is exempt from the EEA family permit requirement.

In such cases, a Border Force Officer should then give the passenger the opportunity to evidence their right of admission under EU law by other means, in line with regulation 11(4). This is the same consideration as for any non-EEA family member of an EEA national who arrives at the UK border and who does not hold one of the documents specified in regulation 11(2). Where the passenger is unable to satisfactorily demonstrate their right of admission, the Border Force officer must refuse admission under the EEA Regulations.

Where the Border Force Officer is not satisfied that the document presented is a genuine document, they must refuse to accept the document as evidence that the holder is exempt from the EEA family permit requirement, refuse admission and follow the normal process for dealing with fraudulent documentation.

6.6.2 Residence Cards versus Residence Permits

The McCarthy judgment only applies to residence cards issued under free movement law to family members of EEA nationals who are exercising free movement rights in another EEA Member State, i.e. not their Member State of nationality.

For example,

- The Indian spouse of a German national living in Germany would usually hold a residence permit in the common biometric format (i.e. as with the BRPs we issue here). **McCarthy does not apply in this case.**

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- The Indian spouse of a German national living and working in France (i.e. the German national is exercising free movement rights) would hold a residence card issued under EU law. The McCarthy judgment does apply in this case.
- An Indian national settled in Germany (with no EU relatives) may well hold a residence permit in the common biometric format. **McCarthy does not apply in this case.**
- The Indian spouse of a German national living in France who has been issued with a residence permit in the common biometric format in their own right in France under French domestic law (i.e. the Indian spouse has autonomous rights in France which are not dependent on the EU national). **McCarthy does not apply in this case.**

Residence cards and permanent residence cards issued under the Free Movement Directive should contain the wording 'family member of a Union citizen'.

If Border Force officers cannot establish to their satisfaction that the card presented was issued under the Free Movement Directive, for example if the wording 'Family Member of a Union Citizen' is not present or is not comprehensible then, in the absence of any other supporting documentation (as per regulation 11(4)), the person should be refused admission under the EEA Regulations (but they may have alternative leave to enter or transit under the Immigration Rules).

It should be noted that Switzerland does not issue residence cards under Articles 10 or 20 of the Directive. Therefore, any document issued by the Swiss authorities will not be within the scope of the McCarthy judgment.

6.6.3 Right of admission for persons with an Article 10 residence card

The presentation of a document which meets the criteria set out above **does not** on its own give the holder a right of admission, it simply exempts the holder from the requirement to hold an EEA family permit. A person who presents such a document must also demonstrate that:

- they are the family member of the EEA national as claimed;

and

- they are accompanying the EEA national to the UK, **or**
- they are joining the EEA national in the UK;

and

- the EEA national is residing in the UK in accordance with the Immigration (European Economic Area) Regulations 2006 (as amended), or will have a right of residence on entering the UK (where they are travelling with the non-EEA family member).

A family member of an EEA national who presents with a qualifying residence card issued by another EEA Member State, but **who is not accompanying or joining the EEA national in the UK, is not entitled to be admitted to the UK under the EEA Regulations.**

For example, the non-EEA spouse of a German national who is working in Italy, but who is travelling to the UK for a holiday without their German national spouse, would be subject to the normal visa requirements even where they hold a residence card. This is because their right of admission to the UK is dependent on them joining or accompanying the EEA national. It does not give a free-standing right of admission; it **only** acts as an exemption from the EEA Family Permit requirement if they are travelling with or joining the EEA national.

Where the non-EEA national is not travelling with their EEA national family member, but claims that the EEA national is in the UK, the Border Force officer should seek to verify this, for example by contacting the EEA national by phone or requesting other documentary evidence to support the claim. **The onus is on the passenger to demonstrate to the Border Force Officer that they have a right of admission under the Regulations.** If Border Force Officer cannot reach the EEA national and/or are not otherwise satisfied that the EU national is in the UK and where appropriate (if the EU national has been here for more than three months) that the EU national is exercising Treaty rights then the Border Force Officer should refuse admission under the EEA Regulations.

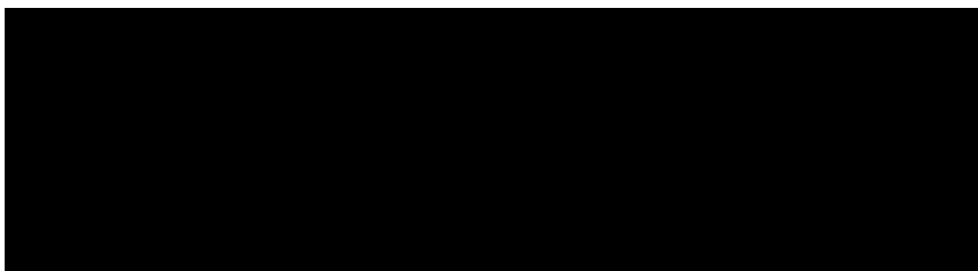
6.6.4 Establishing the authenticity of the relationship to the EEA national

Where a Border Force Officer is satisfied that the document presented is a genuine, valid Residence Card of a Family Member of a Union citizen issued under the Directive, they should then consider whether the holder is the genuine family member of an EEA national as claimed.

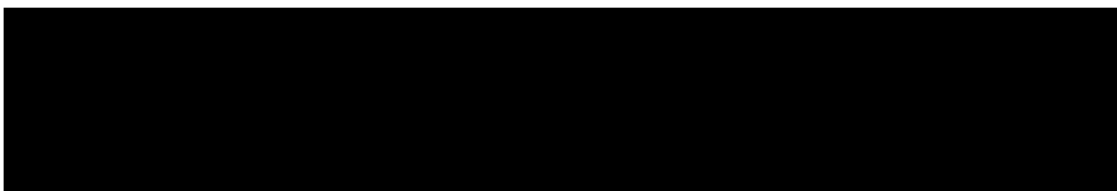
For example, a person claiming to be the spouse or civil partner of an EEA national may provide evidence such as an original marriage or civil partnership certificate, photographs of them with the EEA national, evidence of a joint bank account. A person claiming to be the child of an EEA national could provide their original birth certificate.

If the Border Force Officer is satisfied that the relationship is genuine, they should go on to consider whether the passenger is accompanying or joining the EEA national.

If the Border Force Officer is not satisfied that the passenger is related as claimed to the EEA national, they can make further enquiries to establish the authenticity of the relationship. For example, for a person claiming to be the spouse or civil partner of a EEA national, the Border Force Officer may wish to interview both the passenger and, if present, the EEA national in order to establish whether the relationship is genuine.



Guidance on marriage interviewing can be found on horizon at the following address:



If the Border Force Office is satisfied that the relationship is genuine, they must go on to consider whether the EEA national has a right of residence in the UK. If the Border Force Officer is not satisfied that the relationship is genuine following these further enquiries, they must refuse admission under the EEA Regulations.

6.6.5 Extended family members with Article 10 residence cards

It should be noted that the exemption from the requirement to obtain an EEA family permit prior to travelling to the UK applies only to direct family members of EEA nationals as defined under Regulation 7 of the EEA Regulations.

Extended family members as defined under regulation 8 remain subject to the requirement to hold an EEA family permit before travelling to the UK.

Direct family members of an EEA national are:

- Spouse or civil partner
- direct descendents of the EEA national, or their spouse or civil partner, who are:
 - under 21 years of age, or
 - 21 or over and dependents of the EEA national or their spouse or civil partner
- dependant direct relatives in the ascending line of the EEA national or their spouse or civil partner.

Relatives of EEA nationals who are not direct family members listed above **only** have a right of residence in the UK where they have been issued with a valid EEA family permit, registration certificate or residence card by the UK Home Office. In these circumstances, a residence card issued by another EEA Member State does not exempt the holder from the requirement to hold an EEA family permit. This is because under EU law, extended family members do not have an automatic right to be admitted, and Member States have the right to decide whether to admit persons in this category, having regard to all the circumstances.

Furthermore, non-EEA extended family members who present at the UK border without an EEA family permit or UK-issued residence card are not entitled to be admitted to the UK regulation 11(4). Therefore, a non-EEA national who does not hold an EEA family permit and who presents at the UK border with an Article 10 or Article 20 permanent residence card issued by another Member State as the extended family member of an EEA national should be refused admission and directed to make an EEA family permit application if they wish to accompany or join the EEA national in the UK.

6.6.6 Family member of British citizens with Article 10 residence cards

The judgment in McCarthy also applies to residence cards issued to family members of British citizens who have exercised Treaty rights as a worker or self-employed person in another EEA Member State.

However, where a non-EEA family member of a British citizen is claiming a right of admission on the basis that they have resided with that British citizen while they exercised Treaty rights as a worker or self-employed person in another EEA Member State ('Surinder Singh' cases), they would need to demonstrate to the Border Force Officer that the requirements set out in regulation 9 were met, and that they are accompanying or joining the British citizen in the UK.

6.6.7 Carriers' liability

Where a non-EEA national passenger presents a document which they assert is a residence card issued by another EEA Member State, carriers should only accept such documents where they are absolutely confident that the document is a genuine, valid residence card issued under Article 10 (or permanent residence card issued under Article 20) of the Free Movement Directive (2004/38/EC) and if the non-EEA national is travelling with or joining the EEA national in the UK.

If a carrier boards a non-EEA passenger on the basis of a document which, upon examination, transpires to be either a fraudulent or invalid document, or a document which was issued on a basis other than Articles 10 or 20 of Directive 2004/38/EC, and that passenger is subsequently refused admission to the UK under the EEA Regulations, the carrier will remain liable

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for charges under Section 40 of the Immigration and Asylum Act 1999 (as amended)

Examples of residence documentation issued by other EEA member states can be found here:



(However, it should be noted that in many cases this web-site fails to identify whether a card has been issued in accordance with Articles 10 or 20 of the free movement Directive.)

If the carrier requires further advice regarding documents presented by persons claiming to be family members of EEA nationals, they should contact the relevant Immigration Liaison Manager (ILM) for advice.

6.6.8 Other refusal of admission for holders of Article 10 residence cards

Non-EEA nationals who hold valid residence cards issued by another Member State and who otherwise satisfy the criteria for admission can still be refused admission under regulations 19 (public policy, public security, public health and abuse of Free Movement rights) in the usual way. You can find information on considering the refusal of admission to a family member of an EEA national in section 2 of the Border Force Operating Manual on Horizon:



6.6.9 Right of appeal

Where the bearer of a valid residence card claiming to be the family member of an EEA national is refused admission to the UK under the EEA Regulations, they will have a right of appeal against that decision under regulation 26(3) where they produce –

- a passport and
- either –
 - an EEA family permit;
 - a qualifying EEA State residence card; or
 - proof that they are the family member or relative of an EEA national;
 - in the case of a person claiming to be a family member who has retained the right of residence, proof that they were a family member of the relevant person.

In line with regulation 27(1)(a), an appeal against a decision to refuse to admit a person to the UK under the EEA Regulations is an out of country appeal right, unless the individual is **already resident** in the UK and holds an EEA family permit, registration certificate, residence card, qualifying EEA Member State residence card, document certifying permanent residence, permanent residence card or a derivative residence card.

7. Dealing with Family Members on the PCP

[REDACTED – NOT IN SCOPE]

7.5 No EEA family permit or UK issued residence card is held

Third-country national family members who do not hold an EEA family permit, or a UK issued residence card, should **not** be denied admission for lack of such a document alone. Border Force Officers should assess whether or not a person nevertheless qualifies for admission under the EEA Regulations, taking particular note of the guidance on those who seek admission under the extended family member provisions.

If satisfied that the non EEA national qualifies under the EEA Regulations, the officer should endorse the passport with the EEA dependant stamp for six months. If they do not qualify or if there is some doubt the case should be referred to a Border Force Senior Officer.

If a passenger is landed with this stamp a landing card should be completed with full details of how the passenger qualifies for admission. The statistical category is O.