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Settled

A positive future for EU citizens in the UK

16th August 2024

Seema Malhotra M.P.
Parliamentary Under-Secretary of State
Minister for Migration and Citizenship
The Home Office

Dear Seema Malhotra,

Re: EU Settlement Scheme requirements

Our charity Settled has helped thousands of EU citizens and their family members to make applications to the EU Settlement Scheme (EUSS). We appreciate that the scheme's application process is designed to be straightforward, and it is an immense achievement that millions of EU citizens have been able to make successful applications which have been processed effectively by the Home Office.

Settled's focus is on those EU citizens who have additional vulnerabilities and/or complex circumstances and cannot easily navigate the scheme without help. We work closely and well with the Home Office to expedite such cases. Usually, by helping individuals to present their case and related evidence in a clear way, and by negotiating on their behalf with staff at the Home Office, we can reach the positive outcome that all are hoping for.

There are some types of cases in which this appears more difficult and more time-consuming, and I would like to bring to your attention to some of the types of difficulties which we have been raising with colleagues at the Home Office. In such cases we think improvements to guidance and practice are needed to uphold the requirements and the spirit of the EU-UK Withdrawal Agreement which include to facilitate the residence of EU citizens, preserve rights, and promote family unity, giving consideration to proportionality and avoiding administrative burdens.

Settled is one of the Home Office grant-funded organisations: currently we are funded by the Home Office to provide services to EU citizens in Wales at OISC Level 1. This is just a part of our work, as we

are funded from other sources and provide services UK-wide accredited to give immigration advice at OISC Level 3.

Women and youths, particularly in the Roma community, who lack what the Home Office considers *'Preferred evidence of residence'*.

It is common for women who are EU citizens and from the Roma Community (or other communities with similar customs and traditions) to live a life of dependency and seclusion. Typically, they do not work outside the home and employment records, bank accounts, tenancies and utility bills are in the names of their husbands or other male relatives. They may have no interaction with public services and may not be registered with a G.P. Circumstances may be similar for 16–18-year-olds from such communities who are not at school or in employment.

Applicants to the EU Settlement Scheme must provide evidence that they have been continuously resident in the UK for the required time. Home Office guidance sets out the *"Preferred evidence of residence",* but the Home Office's guidance also directs decision makers to work flexibly with applicants to help them evidence the residence *"by the best means available to them"*. For women in the situation described here, it is all but impossible for them to provide forms of evidence "preferred" by the Home Office in order to demonstrate that they have been resident in the United Kingdom in accordance with the rules for settlement under the EUSS.

Settled has a specialist Roma immigration adviser working in community venues in North London. The experience from his casework, and from other cases seen by other members of our team, shows a pattern of applications being refused where the Home Office have not been provided with the *"Preferred evidence of residence"* as part of the application, even if other forms of evidence have been submitted instead. Settled's interventions on behalf of such cases, including collating what supporting evidence exists, are often not sufficient. Months of time-consuming negotiations (which are burdensome for our small team) can be required and not always with success. In our view, in such cases the Home Office decision makers are not always giving consideration to the flexibility contained in the guidance that applicants can evidence residence *"by the best means available to them"*.

This is a concern not just for those making their first application to the EU Settlement Scheme. There is an additional concern for the large numbers who were granted pre-settled status and must make a fresh application in order to secure settled status. They will encounter a repeat of the difficulties that they faced when they made their first application, as they will still struggle to provide *"Preferred evidence of residence."*

We appreciate that these can be some of the most challenging cases for Home Office decision makers to assess. We would like to ask for a more innovative and solution-focused response to such cases across the board, and not only on a 'case-by-case' basis when they are brought to the attention of the EUSS Vulnerability Team (as is currently the case); and for more weight to be given to Settled's presentation of the evidence available.

Durable partners who do not cohabit

We are concerned about outcomes for people whose EUSS application is based on a claim to be in a durable partnership, when there is no evidence that the parties have lived together in a relationship akin to marriage for 2 years, but there is other significant evidence of a durable partnership prior to 31.12.2020.

While Home Office policy states that the requirement for the parties to be living together for two years prior to 31.12.2020 is a *"rule of thumb",* our casework shows refusals of applications made by individuals who have shown evidence of long-term communication while living apart for religious and cultural reasons or economic reasons; applications are presented with supporting evidence from religious leaders or organizations, universities and evidence of historical contact between the parties.

However, the fact that the parties are unable to provide evidence that they have cohabited for two years before 31.12.2020 either forms the basis of a refusal of their application by the Home Office or a request for evidence that they have been living together for two years. This indicates a practice at the Home Office which treats cohabitation for two years as a requirement to be satisfied to evidence a durable partnership rather than a *"rule of thumb."*

Settled has been contacted to help numerous couples in this situation, including, but not only, young couples from Muslim families or from traditional Catholic families, and we are concerned about the impact on their future prospects. We have even seen refusals in such cases where a couple has children and shares responsibility for their upbringing while living apart for economic reasons. In such cases caseworkers will sometimes accept evidence of bank transfers as evidence of a durable partnership but not always; and Settled would like to see this evidence accepted more consistently.

Settled asks for your attention to ensure that the Home Office guidance is followed in terms of the discretion available to decision-makers, and to provide more clarification so that it is not interpreted as a strict rule but rather as the guidance it is intended to be.

Applicants who lack capacity to instruct an adviser

In the majority of cases that we see, the applicant is able either to act independently on the basis of our advice or is able to confirm to the Home Office that they have asked Settled to act on their behalf. In a small but increasing minority of cases of EUSS applicants, the individual lacks the capacity to instruct an adviser to act on their behalf. In our experience, these are typically cases of people who have severe mental health challenges and/or substance misuse issues, living a homeless and chaotic life.

These situations are at variance with pages 45 and 46 of the current Home Office guidance https://assets.publishing.service.gov.uk/media/6615454a2138736672031b3c/EU_Settlement_Scheme_EU__other_EEA__Swiss_citizens_and_family_members.pdf in that they go beyond the scenarios describing applicants' limited understanding. The design of the EU Settlement Scheme assumes that individual applicants understand what they are doing, the importance of providing truthful information (including in relation to questions on criminality) and finally the implications of being untruthful in relation to their credibility and possible criminal offences.

Settled is often contacted by local authorities, NHS Trusts and third sector organisations who are unsure how to deal with clients where there is a question over capacity which mean that meaningful instruction by them and participation in the process of applying is diminished. Any regulated immigration advisor has an ethical and professional obligation to ensure that the person they are advising can provide meaningful instruction and that their advice is understood by those they are seeking to advise. The OISC, SRA and Bar Standards Board are among regulators that stress the importance of this in relation to professionalism and ethical behaviour by advisors.

At worst, we come to a standstill, unable to proceed because the client struggles so much to participate in the process (or cannot). There are an increasing number of such individuals who, as a result of this, cannot access public funds or other state support and who therefore risk having support withdrawn by organisations, local authorities, etc, who require such funds.

We propose that the Home Office considers allowing medical professionals or professional social workers involved in the care of such individuals to sign off on such applications or instruct on their behalf. The alternative to this is that formal authority is sought in each case from the Court of Protection or formal guardianship orders are expedited by the Home Office to assist with such applications.

Delayed Decisions

The Home Office EUSS vulnerability team are consistently helpful whenever Settled notifies them of a case that needs special attention. But we observe that even when representations are made by the vulnerability team to the Home Office casework teams, this is not always sufficient to resolve a case promptly.

Settled has several cases in its current caseload that have been waiting over a year for the outcome of their EU Settlement Scheme application. This is stressful and disruptive for the individuals concerned and adds a burden to our workload.

Settled asks that processes and resources are addressed so that delays are kept to a reasonable level.

Confusion about Pre-Settled Status and the continuous residency requirement

The recent decision to automatically extend the period that an individual can hold pre-settled status is welcome, but it has given rise to the mistaken belief that people with pre-settled status now have more time in the UK to gain the 5 years continuous residency needed to transition to settled status. However, for people relying on their own residency rights this is not the case as they will still be required to provide evidence of continuous residency for 5 years since 31/12/20.

In reality, the extension of their pre-settled status assists them minimally if they are have issues evidencing residency or have an extended absence from the UK. They will still be required to navigate these issues in 5 years' time. By then, their lives in the UK will be more established and the impact of not being able to transition to settled status more destabilising.

Settled asks that the rules concerning the period of continuous residency are reviewed, and that simple clarifying public messages in multiple languages are shared with EU citizens.

I hope that by bringing these concerns to your attention the Home Office can reflect on its guidance to its decision-makers and related processes, so that timely and flexible solutions can be found in the most challenging cases.

Thank you for giving this your consideration.

Yours sincerely,

Kate Smart
CEO, Settled