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3HR Legal Weekly

Immigration

IMMIGRATION TO THE UK - BREXIT UPDATE FOR EU NATIONALS

Since the Brexit referendum and then the triggering of Article 50 in March this year, the UK government has been keen to make clear that it wishes to provide certainty for the rights of EU citizens living in the UK. Unfortunately, those rights will not be finalised until there is an agreement between the UK and the EU on this issue, and also on the reciprocal rights of UK citizens living in other EU countries.

At this stage, **there is no definite confirmation on how EU workers will be affected by Brexit.**

However, the Home Office have set out their intentions for the rights that will be applicable to EU workers and the applications that EU workers will have to make. In this regard there are three main categories of EU worker, all dependent on a “cut off date” (see below):

1. Those who have been living in the UK for 5 years by the cut off date:
These individuals will be able to apply for indefinite leave to remain (also known as permanent residence).
2. Those who arrived before the cut off date but have not yet lived in the UK for 5 years:
These individuals will be able to apply to stay in the UK until they have completed 5 years here, at which point they will be eligible to apply for indefinite leave to remain.
3. Those who arrive after the cut off date:
These individuals will need to apply for leave to remain after Brexit - there is no indication at this stage of how long they will be able to stay or how they might become eligible for indefinite leave to remain.

The “cut off date” is yet to be decided, but is clearly going to have a significant impact on what rights individuals will hold. The Home Office have indicated that the cut off date will not be before 29 March 2017 and will not be later than the date the UK leaves the EU.

From the above, it appears clear that the third category of worker has the most uncertain future. The first two appear to be given the full ability to obtain permanent residence in the UK, presumably under a relatively straightforward application process. Those who arrive after the cut off date (whenever that may be and, indeed, it may have already passed) have no current indication on the type of stay they will be permitted for the UK.

The Home Office has also stated that, no matter what status an EU worker has in the UK, after Brexit they will need to make a new application in order to remain in the UK. This will even apply to those who already hold permanent residence rights (since those rights were obtained under EU law, so they will need new permission under the new UK laws that will be applicable), although it is expected that the application process for those individuals will be very straightforward.

For now, **no action is required.** Based on the above, there is no indication that there would be any benefit in EU citizens applying at this stage for permanent residence status in the UK. However, on the basis that the above is only a proposal and is not the guaranteed position that will be adopted by the UK government, generally speaking most commentators and individuals feel that holding a permanent residence document is likely to give individuals a greater likelihood of being permitted to stay in the UK after Brexit takes place. For complete certainty, EU migrants currently working in the UK may wish to apply for a British passport, which would require firstly that they hold permanent residence status.

For assistance with applying for permanent residence documents for EU workers or their family members, get in touch with one of our team.

Thomas Miles
Solicitor/Head of Legal
E: thomas.miles@3hracs.com



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