

THE BUSINESS OF WEALTH

FAMILY OFFICE MAGAZINE

SUMMER ISSUE 2019

ART & MUSEUM MAGAZINE INCLUDED



RITOSSA FAMILY OFFICE SUMMIT
SIR ANTHONY RITOSSA

WORLD LEADING PUBLICATION DEDICATED TO FAMILY OFFICES - WEALTH - UHNWI - BILLIONAIRES - ENTREPRENEURS

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EUROPEAN NATIONALS AND THE EU SETTLEMENT SCHEME

by Mark Barnett

The immigration position of European nationals and their family members living in the UK after Brexit and the operation of the EU Settlement Scheme.

Notwithstanding the uncertainty as to the timing of Brexit, at the end of March this year the Home Office launched a £3.5m advertising campaign, to encourage the estimated 3.5 to 3.8 million people from the European Union, living in the UK, to secure their immigration status by applying under the EU Settlement Scheme.

Under the scheme, EU nationals and their family members residing in the UK are now able to apply and indeed are required to do so by certain specific dates, for either what is known as "Pre-settled Status" or "Settled Status", depending upon how long they have actually resided in the UK.

The scheme is also open to the citizens of the EEA countries of Iceland, Liechtenstein, and Norway, as well as Switzerland and their family members. Irish citizens or those with Indefinite Leave do not need to apply.

There is now no charge for applications, and those who paid a fee before March 29th, having already made an application, should have received an automatic refund.

As part of the application process, individuals can scan their passports using an Android phone or send their passports or identity documents to the Home Office by post or attend local "identity scanner" locations. By the end of 2019, they may also be able to use their iPhones.

Those individuals who have been living continuously in the UK for 5 years by the time of the application are able



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to apply for Settled Status, which is the equivalent of obtaining indefinite leave to remain. Even those EU nationals who are currently holding permanent residence under the existing regulations still need to apply for Settled Status.

The implication of obtaining Settled Status is that the applicants and their family members will be able to stay in the UK indefinitely. The applicants need to prove their identity, prove that they have been residing in the UK for a continuous period of 5 years by the time they make the application, show that they have no serious criminal convictions, and provide their biometric information.

For those applicants who have not been living in the UK for 5 years, they are required to apply for Pre-settled Status, and if successful, they will be granted 5 years' leave to remain. Once they have lived in the UK continuously for 5 years, they will then be able to apply for Settled Status.

The Home Office has disclosed that up to 9TH May 2019, 600,000 applications had been made under the scheme.

There are two important deadlines to bear in mind with respect to these applications, the first being 31st December 2020, by which EU nationals or family members of EU nationals need to have entered the UK in order to be eligible to apply for Settled Status or Pre-settled Status.

The second deadline of 30th June 2021 is for those applications to have been made for Settled Status or Pre-settled Status, although again in the event of a "no deal" scenario, this date will become 31 December 2020, with no 6-month grace period.

EU citizens and their family members residing in the UK before whatever the "withdrawal date" may be will continue to be able to work, study, and access benefits and services in the UK on the same basis as they are able to do so now.

Those non-EU family members of EU nationals who successfully apply under the scheme and don't hold Biometric Cards at the time they apply may receive Biometric Cards confirming either their Pre-Settled or Settled status. Those EU nationals who successfully apply under the scheme will receive a decision letter from the Home Office, and their status can be confirmed online through the Home Office online checking service "View and Prove your Rights in the UK."

In the event of "no deal", however, those European nationals not residing in the UK before the

withdrawal date and entering the UK after that date will be granted 3 months' leave. If they want to stay after that, they will need to apply for European Temporary Leave to Remain. Assuming their application is approved, they will then be able to stay in the UK for 3 years from the date it is granted. This will be a temporary non-extendable immigration status and not lead to indefinite leave to remain or any status under the EU Settlement Scheme.

Those European nationals residing in the UK who wish to apply for British Nationality need first to have obtained Permanent Residency or Settled Status. They may also need to have held that status for at least 12 months, depending, in the case of Permanent Residency, on the date they are deemed to have acquired that status and /or whether they are married to a British national.

A new UK skills-based immigration system is planned to be adopted from 1st January 2021, and from that date there will be no guarantee that EU citizens will be granted entry to the UK, simply on the basis of presenting their EU national identity card or their EU passport, and they may then be treated in the same way as non-EU foreign nationals are now, for immigration purposes.

To summarise, whilst at the time of writing this article the Brexit situation remains unclear, the EU Settlement scheme is very much up and running and a useful tool for those Europeans residing in the UK to confirm and protect their status, as well as an important step for those who are interested in applying for British Nationality.

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