

## **EU CITIZENS, UK VISAS AND BREXIT – WHAT SHOULD YOU DO?**

### **The UK referendum on EU membership**

1. On 23<sup>rd</sup> June 2016, the United Kingdom will hold a referendum on the following question: "Should the United Kingdom remain a member of the European Union or leave the European Union?".
2. If the majority of voters vote "yes", the UK will remain a member of the EU and there will be no change to the rights of EU citizens to reside in the UK.
3. If the majority of UK voters vote 'no' to remaining in the EU, the position is less clear-cut – no other state has withdrawn from the EU so the process and outcome have no precedent. What we do know or have been told by the British government is that:
  - a. Even though a referendum is not legally binding, in the event of a vote to leave the government will immediately start the process for the UK's exit from the EU;
  - b. If the UK does notify the EU that it wishes to leave, the UK will effectively automatically exit the EU two years later, unless a different period is agreed;
  - c. Within the two years, the UK would have to negotiate its exit and the framework for its future relationship with the EU; and
  - d. Until the actual point of exit, EU law will continue to bind the UK.

### **Current UK immigration rules for citizens of EU member states**

4. One of the fundamental principles of EU law is freedom of movement and establishment, under which citizens of all EU member states have the right to freedom of movement for workers within the EU.
5. Administratively, each EU member state implements the right to freedom of movement and related EU law in its own way. In the UK, citizens of EU member states do not require a permit to enter, live in or work in the UK. However, if they wish to, they may apply for a registration certificate that proves their right to live or work in the UK.
6. UK-resident citizens of member states may have non-EU immediate family members. Under EU law, they also have the right to enter, live and work in the UK. Strictly speaking they do not require a UK residence card or visa but it is usually practical for them to obtain one as proof of their rights.
7. Extended family members and people who derive their rights indirectly from EU citizens in the UK (for example, a person who is the primary carer for a child who is an EU citizen and lives in the UK) can come to the UK but require a residence card.
8. If EU citizens wish, they can apply for permanent residence (also known as indefinite leave to remain or settlement) once they have been resident in the UK for five continuous years. It appears likely that if a person has obtained permanent residence in the UK on the basis of EU citizenship, they will continue to have permanent residence even if the UK leaves the EU.

9. Once a person has lived in the UK for five years and had permanent residence for at least 12 months, they can, subject to certain requirements, apply for British citizenship.

#### **The effect of Brexit on UK visa rules for EU citizens**

10. As described above, the right of EU citizens and their dependants to move freely to and live and work in the UK is a right based on EU law. If the UK leaves the EU, EU citizens will no longer have that right automatically.
11. It is not yet clear whether the UK would (or could) negotiate special agreements with the EU or other individual states to deal specifically with the right to live and/or work in the UK. The possibilities, as we see them, are:
  - a. The UK will enter into agreements with the EU or individual EU countries that allow their citizens to live and work in the UK either on a wholly visa-free basis or a less restrictive basis than applies to other countries. For example, such agreements may allow citizens of other countries to come to the UK if they have a pre-existing job offer in the UK or are financially independent of the state; or
  - b. There will be transitional arrangements under which EU citizens and their families who are resident in the UK, have been UK resident for a specified minimum period or are in full-time employment will be given visas to remain until their employment or residence ceases. New EU entrants to the UK will need to have a visa in the same way as non-EU citizens do now or will have new rights under new agreements negotiated between the UK or their home countries; or
  - c. There will be no transitional arrangements and no useful agreements will be negotiated. Instead, within a specified period all EU citizens will need to apply for fresh visas using the existing non-EU visa categories and leave the UK if they are not granted. New entrants to the UK will need to have a visa in the same way as non-EU citizens do now. In our opinion, this is an unlikely outcome as it would cause chaos in the employment and financial markets and probably breach human rights law in many instances.

#### **What should you do if you are an EU citizen living in the UK?**

12. Given the uncertainty of the result of the referendum itself and of what the British government will do or be allowed to do if there is a vote to leave, it is not possible to give EU citizens who are presently UK resident a conclusive answer as to what steps they should take but our general recommendations are set out below. As the circumstances of every individual are different, you should take further professional advice if you wish to check your own position and options.
13. If you are an EU citizen or family member and have or will shortly have been resident in the UK for at least five years and have permanent residence, you should consider applying for British citizenship as soon possible.
14. Citizens of EU member states and their families who have resided in the UK for at least five continuous years should apply for a permanent residence card. We anticipate that this will give them the right to remain in the UK regardless of whether the UK leaves the EU.
15. If the UK does vote to leave the UK, assuming that immigration law does not change while the exit is negotiated, citizens of EU member states and their families who reach five years' continuous residence between the vote and exit should apply for permanent residence cards immediately.
16. If you will not qualify for permanent residence before the UK may leave the EU:
  - a. You should consider applying for a registration certificate to prove your UK residence now. You will still be able to apply for registration after the vote, even if it is a vote to leave, but the volume of applications is likely to be much higher so an application now may be dealt with more quickly;

- b. It is unlikely that there will be other sensible steps you can take in respect of your UK immigration status until the result of the referendum is known;
- c. If the vote is for the UK to leave the EU, you will not lose your right to reside in the UK immediately – your EU rights will continue until the UK finally exits. The government will need to commence negotiations with the EU and, subject to their outcome, announce what they plan to do in respect of EU citizens already living in the UK;
- d. If transitional arrangements are put in place, you may be able to take advantage of them and possibly obtain permanent residence in due course;
- e. If there are no transitional arrangements or there are other circumstances that may prevent you or a member of your family from entering the UK, you should look at other visa options if you wish to remain the UK. Possible other visas are described below:

### Other visas

- 17. This is not a comprehensive list of visas but we can advise further if you wish to explore what may suit you if required.
- 18. *Tier One (Investor) visa* – this is a visa under which a person may live, work and study (if they wish to) in the UK without restriction if they have a minimum of £2 million which they can and will invest in UK government bonds, share capital or loan capital in active UK companies. This visa can lead to permanent residence in the UK after two to five years' residence, depending upon how much is invested in the UK, and eventually to British citizenship;
- 19. *Tier One (Entrepreneur) visa* – this is a visa designed to encourage non-UK entrepreneurs to set up or grow new businesses in the UK. Generally, entrepreneurs must have a minimum of £200,000 of capital that they must invest into a UK business or businesses. In order to extend their initial three year visa, they must also become self-employed in or a director of the business or businesses and create at least two new full-time jobs in the UK. Again, this visa can lead to permanent residence in the UK and eventually to British citizenship;
- 20. *Tier two visas* – these are the equivalent of the old work permits and require the participation of your employer.
- 21. Under all these visas, family members have a right to accompany the visa-holder to the UK.

**This note contains only an overview of the possible impact of an exit of the UK from the European Union. As every person's circumstances are different, you should take professional advice if you would like to check your own position and options. If you would like help with this, please contact:**

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