

2012 No. 1547

IMMIGRATION

**The Immigration (European Economic Area)
(Amendment) Regulations 2012**

Made - - - - 19th June 2012
Laid before Parliament 22nd July 2012
Coming into force in accordance with Regulation 2

The Secretary of State, being a Minister designated(a) for the purpose of section 2(2) of the European Communities Act 1972(b) in relation to measures relating to rights of entry into, and residence in, the United Kingdom, in exercise of the powers conferred by that section, and of the powers conferred by section 109 of the Nationality, Immigration and Asylum Act 2002(c), makes the following Regulations:

Citation

1. These Regulations may be cited as the Immigration (European Economic Area) (Amendment) Regulations 2012.

Commencement

2.—(1) Subject to paragraph (2) these Regulations will come into force on 16th July 2012.

(2) Paragraph 1(d) of Schedule 1 to these Regulations will come into force on 16th October 2012.

[Regulations 3 & 4 and Schedules 1 & 2 make various amends to S.I. 2006/1003.]

19th June 2012

Damian Green
Minister of State
Home Office

(a) S.I. 2000/1813.

(b) 1972 c. 68; section 2(2) was amended by paragraph 1 of Schedule 1(1) to the European Union (Amendment) Act 2008 (c. 7) and by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c. 51).

(c) 2002 c. 41.

SCHEDULE 3

Regulation 4

Transitional Provisions

Interpretation**1.** In this Schedule—

- (a) the “2006 Regulations” means the Immigration (European Economic Area) Regulations 2006; and
- (b) the terms “EEA family permit”, “EEA State”, “family member”, “registration certificate” and “residence card” have the meanings given in regulation 2(1) of the 2006 Regulations.

Amendments to the definition of EEA national

2.—(1) Where the right of a family member (“F”) to be admitted to, or reside in, the United Kingdom pursuant to the 2006 Regulations depends on the fact that a person (“P”) is an EEA national, P will, notwithstanding the effect of paragraph 1(d) of Schedule 1 to these Regulations, continue to be regarded as an EEA national for the purpose of the 2006 Regulations where the criteria in subparagraphs (2), (3) or (4) are met and for as long as they remain satisfied in accordance with subparagraph (5).

(2) The criterion in this subparagraph is met where F was on 16th July 2012 a person with a permanent right to reside in the United Kingdom under the 2006 Regulations.

(3) The criteria in this subparagraph are met where F—

- (a) was on the 16th July 2012 a person with a right to reside in the United Kingdom under the 2006 Regulations; and
- (b) on the 16th October 2012—
 - (i) held a valid registration certificate or residence card issued under the 2006 Regulations;
 - (ii) had made an application under the 2006 Regulations for a registration certificate or residence card which had not been determined; or
 - (iii) had made an application under the 2006 Regulations for a registration certificate or residence card which had been refused and in respect of which an appeal under regulation 26 could be brought while the appellant is in the United Kingdom (excluding the possibility of an appeal out of time with permission) or was pending (within the meaning of section 104 of the Nationality, Immigration and Asylum Act 2002(a)).

(4) The criteria in this subparagraph are met where F—

- (a) had, prior to the 16th July 2012, applied for an EEA family permit pursuant to regulation 12 of the 2006 Regulations; or
- (b) has applied for and been refused an EEA family permit and where, on the 16th July 2012, an appeal under regulation 26 against that decision could be brought (excluding the possibility of an appeal out of time with permission) or was pending (within the meaning of section 104 of the 2002 Act).

(5) Where met, the criteria in subparagraph (2), (3) and (4) remain satisfied until the occurrence of the earliest of the following events—

- (a) the date six months after an EEA family permit has been issued if F has not within that period been admitted to the United Kingdom;

(a) 2002 c. 41; section 104 was amended by paragraphs 20(a) and (b) of Schedule 2(1) to the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19), by section 9 of the Immigration, Asylum and Nationality Act 2006 (c. 13), and by paragraphs 26(a) and (b) of Schedule 1 to S.I. 2010/21.

- (b) the date on which an appeal against a decision referred to in subparagraph (3)(b)(iii) or (4)(b) can no longer be brought (ignoring the possibility of an appeal out of time with permission) where no such appeal has been brought;
- (c) the date on which any appeal against a decision referred to in subparagraph (3)(b)(iii) or (4)(b) is finally determined, is withdrawn or is abandoned (within the meaning of section 104 of the 2002 Act) (save where the outcome of the appeal process is that the document in question falls to be granted);
- (d) the date on which F ceases to be the family member of an EEA national; or
- (e) the date on which a right of permanent residence under regulation 15 of the 2006 Regulations is lost in accordance with regulation 15(2) of those Regulations.

(6) P will only continue to be regarded as an EEA national for the purpose of considering the position of F under the 2006 Regulations.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make amendments to the Immigration (European Economic Area) Regulations 2006 (“the 2006 Regulations”) in order—

- (a) to give effect to judgments of the Court of Justice of the European Union (“the ECJ”) concerning the circumstances in which individuals can be admitted to, and reside in, the United Kingdom; and
- (b) to address issues concerning the transposition of Directive 2004/38/EC and the practical application of the 2006 Regulations.

Paragraphs 4 and 9 of Schedule 1 to these Regulations amend the 2006 Regulations so as to give effect to the judgment of the ECJ in the case of *C-200/02 Kunqian Catherine Zhu and Man Lavette Chen v Secretary of State for the Home Department*. They do so by providing rights of entry and residence for the primary carer of an EEA national, who is (a) under the age of 18 and (b) residing in the United Kingdom as a self sufficient person, where the denial of such a right would prevent the EEA national child from exercising his or her own right of residence.

Paragraphs 4 and 9 of Schedule 1 to these Regulations amend the 2006 Regulations so as to give effect to the judgments of the ECJ in the cases of *C-310/08 Nimco Hassan Ibrahim v London Borough of Harrow and Secretary of State for the Home Department* and *C-480/08 Maria Teixeira v London Borough of Lambeth and Secretary of State for the Home Department*. They do so by conferring rights of entry and residence—

- (a) on the child of an EEA national where the child is in education in the United Kingdom and had entered the United Kingdom and begun to reside there at a time when their EEA national parent was residing as a worker; and
- (b) on the primary carer of that child of an EEA national where requiring the primary carer to leave the United Kingdom would prevent the child of an EEA national from continuing to be educated in the United Kingdom.

Paragraphs 4 and 9 of Schedule 1 to these Regulations also amend the 2006 Regulations in order to provide rights of entry and residence for the dependants of a primary carer where a refusal to confer such a right would prevent their primary carer from exercising his or her right of residence.

A number of other provisions of these Regulations make amendments to the 2006 Regulations which relate to the creation of the rights of entry and residence referred to above; in particular—

- (a) Paragraph 5 of Schedule 1 to these Regulations amends regulation 12 of the 2006 Regulations so as to allow a person to obtain an EEA family permit in order to facilitate the exercise of his or her right to enter;
- (b) Paragraph 11 of Schedule 1 to these Regulations inserts a new regulation 18A into the 2006 Regulations which will enable those exercising these rights of residence to obtain a document evidencing that fact; and
- (c) Paragraph 14 of Schedule 1 to these Regulations inserts a new regulation 21A into the 2006 Regulations which modifies the manner in which decisions under Part 4 of the 2006 Regulations (which relates to the exclusion and removal of, or the denial of documentation to, persons seeking to rely on rights of residence arising under the 2006 Regulations) are to be taken in relation to those persons who rely on the new rights of entry and residence referred to above.

Paragraphs 1, 2, 15, 16, 17, 18, 20, 22, 23, and 24 of Schedule 1 to these Regulations make more minor changes to provisions of the 2006 Regulations in light of the new rights of entry and residence which these Regulations have created and in order to reflect the documents which can be issued in recognition of these rights.

Paragraph 25 of Schedule 1 to these Regulations amends paragraph 6 of Schedule 4 to the 2006 Regulations in order to reflect the principles identified by the ECJ in the cases of *C-162/09 Secretary of State for Work and Pensions v Taous Lassal*, *C-325/09 Secretary of State for Work and Pensions v Maria Dias*, and *C-424/10 & C-425/10 Tomasz Ziolkowski and Barbara Szeja and Others v Land Berlin*. The amendments ensure that activity or residence in the United Kingdom which was not pursuant to the 2006 Regulations will nonetheless count for the purpose of calculating periods of time under those Regulations (which, significantly, includes the period of five years residence after which a permanent right of residence will be acquired) where—

- (a) such activity or residence in the United Kingdom was, at the relevant time, in accordance with the Immigration (European Economic Area) Regulations 2000, the Immigration (European Economic Area) Order 1994, or the directives concerning Free Movement which pre-dated the entry into force of the 1994 Order; or
- (b) such activity or residence was carried out in the United Kingdom by the national of a country which has since acceded to the European Union and who at the relevant time had leave to enter or remain and would have been carrying out that activity or residing in the United Kingdom in accordance with the 2006 Regulations if they had been in force and applied to the person in question at the relevant time.

Paragraph 13 of Schedule 1 to these Regulations inserts a new regulation 20A into the 2006 Regulations. This new regulation enables the Secretary of State to cancel a person's right to reside in the United Kingdom on the grounds of public policy, public security or public health in circumstances in which it is not possible to make a decision to deny the person a document under regulation 20(1) or to remove the person pursuant to regulation 19(3)(b).

Paragraphs 6, 7 and 8 of Schedule 1 to these Regulations make amendments to the provisions of the 2006 Regulations (regulations 13, 14 and 15) which stipulate the circumstances in which a person will be entitled to reside in the United Kingdom. These amendments clarify that where a decision is taken to remove a person pursuant to 19(3)(b), or where a decision is made under regulation 20(1) to deny a person a document evidencing a right of residence, that decision deprives the person in question of the right to reside. Similar provision is made in respect of the cancellation decision created by new regulation 20A. Paragraph 10 of Schedule 1 to these Regulations, however, inserts new regulation 15B into the 2006 Regulations which deems the relevant right to reside to continue while an appeal against the decision which operates to deprive the person of the right to reside could be brought or is pending.

Paragraphs 19, 20 and 21 of Schedule 1 to these Regulations make amendments to the provisions of the 2006 Regulations governing the circumstances in which an appeal can be brought. These provisions include amendments which—

- (a) correct the definitions which delimit the circumstances in which an asylum or human rights issue raised by a person will permit them to appeal from within the United Kingdom in circumstances in which their right of appeal would ordinarily only be exercisable from overseas;
- (b) clarify the documents which must be produced in order to be able to appeal; and
- (c) prevent a person from bringing an in-country appeal against a decision to deny them a document where that decision has been taken whilst the person in question is outside the United Kingdom.

Paragraph 2 of Schedule 1 to these Regulations amends the definition of “student” in regulation 4(1)(d) of the 2006 Regulations so as to remove the reference to a register of Education and Training Providers. The definition is amended so that someone will meet this aspect of the definition if they are attending a public or private establishment which is financed from public funds or is otherwise recognised by the Secretary of State as an establishment which has been accredited for the purpose of providing a course or training within the law or administrative practice of the part of the United Kingdom in which the establishment is located.

Paragraph 3 of Schedule 1 to these Regulations amends regulation 10 of the 2006 Regulations in order to make it clear that a family member of a person who has a permanent right of residence can retain a right of residence in certain circumstances.

Paragraph 1 of Schedule 1 to these Regulations makes various changes to the interpretation provisions in regulation 2(1) of the 2006 Regulations. These amendments include provisions which—

- (a) make it clear that a person will not be regarded as the spouse, civil partner or durable partner of another person for the purpose of the 2006 Regulations where a spouse, civil partner or durable partner of either person is already residing in the United Kingdom; and
- (b) make it clear that a person will not be regarded as an EEA national where they are also a United Kingdom national.

This amendment of the definition of an EEA national reflects the ECJ’s judgment in the case of C-434/09 Shirley McCarthy v Secretary of State for the Home Department. Schedule 3 to these Regulations makes transitional provisions to address the position of persons who have acted in reliance on the previous definition.

