



Important points to note - Family member applications for EU citizens

This briefing note has been prepared as a follow up to the webinar “**Family members: schemes for EU citizens**” presented by Fragomen and hosted by Reunite Families on 15 May 2023. The note has been prepared by the3million.

The relevance of Appendix FM to European nationals

- It is important to be aware that not all EU citizens are eligible for pre-settled or settled status under the EU Settlement Scheme (set out in Appendix EU of the Immigration Rules).
- For many, such as those whose sponsoring EU family member arrived in the UK after 31 December 2020, whose relationships with their sponsoring EU family members began after that date, or in the case of durable partners whose relationship was not already durable by that date, the EUSS may not be the appropriate route under which to apply to come to the UK.
- For those EU citizens, Appendix FM or other categories of the Immigration Rules are more appropriate. There is no reason that an EU citizen cannot apply under the wider Immigration Rules, and indeed it is ever more likely to be the appropriate channel for most EU citizens as time goes on.

Applications for EUSS family permits made while the sponsor's own application remains outstanding

- EUSS Family permits will not be issued whilst the sponsoring EU national's own application remains outstanding. This is set out in Appendix EU Family Permits.
- Currently, applications for family permits take an average of 9 months to be processed, despite the Home Office's published advice stating the processing time is 15 working days from the date of appointment or the verification of your identity if using the ID Check app. There is a real disparity, and those applying from outside need to be prepared for a fairly long wait before they are able to enter the UK and join their EU family members. That waiting time will of course be longer if the sponsoring EU family member is still also waiting for an outcome themselves, some of whom are known to have been waiting over two years.
- This is a grey area, and although non-visa nationals *may* enter the UK whilst their out of country EUSS applications are being considered, they will require evidence that their intention is only to visit and that they intend to leave the UK at the end of their visit. In practice this often does not happen, and individuals are frequently



refused entry into the UK. Also note that applicants who have submitted their applications via the UKVI ID Check app would not need to surrender their passport though others are likely to also be waiting without access to their passports.

Delays affecting application processing times

- Although the Home Office website says that applications take between 5 days and one month, the reality on the ground is that applications are taking between 6-8 weeks to be processed, though many take much longer (see eg the point about family permits above).
- There are currently significant delays across all areas of decision making, from the issuing of Certificates of Application, to the issuing of EUSS status, through to the implementation of appeals following successful hearings in court.

Travelling whilst applications are pending

- With regards to travel, it is important to note that those with outstanding applications (either for status under the EUSS or for family permits) will not be permitted to enter the UK whilst their applications are pending.
- For joining family members who have applied from within the UK but are still waiting on the outcome of their application, we would advise strongly against travel outside the UK. This is because those individuals will not have the documentation they need to re-enter the UK and it is likely they will be barred from re-entering.
- For EU nationals who are not joining family members but were resident in the UK before 31 December 2020, and who are waiting for a decision on an application under the EUSS, travel abroad is only possible once a Certificate of Application has been issued. We would advise against travel even in those circumstances as we have heard of instances in which people have been prevented from returning to the UK due to a lack of adequate supporting documentation, including evidence of residence in the UK prior to 31 December 2020.
- If urgent travel is required, we recommend seeking personalised legal advice.

About the3million

the3million was formed after the 2016 EU referendum to protect the rights of EU citizens who have made the UK their home. Our work includes monitoring the implementation of the Withdrawal Agreement, and informing people of their rights. We are not able to provide individualised immigration advice. For more information see www.the3million.org.uk.