

From: European Operational Policy Team
Subject: Verification of eligibility
Date: 1st January 2014
Issue number: 01/2014

Purpose of notice

1. This notice replaces EOPN 02/13 and provides guidance to case workers on how to consider applications where a person fails to provide evidence to substantiate their claim or attend an interview when invited to do so.

Background

2. The Immigration (European Economic Area) (Amendment) (No.2) Regulations 2013 were amended to include provision at regulation 20B for the Secretary of State to refuse, revoke or, where appropriate, remove a person where they either fail to provide evidence to substantiate their claim, or attend an interview when invited to do so.
3. Regulation 20B came into effect on 1 January 2014 and applies to all decisions made on or after that date.

Applying regulation 20B

4. Regulation 20B applies where the Secretary of State:
 - a) has reasonable doubt as to whether a person ("Person A") has a right to reside as a qualified EEA national or as the family member of an EEA national who is a qualified person or has permanent residence (regulation 20B(1)(a)); or
 - b) wants to verify the eligibility of a person (also referred to as "Person A") to apply for any EEA residence documentation (regulation 20B(1)(b)).
5. Regulation 20B(1)(a) applies where the Secretary of State has reasonable doubt as to whether a person has a right to reside under regulation 14(1) or (2)). This power may be engaged at any point, even where there is no application for documentation, providing there are "reasonable grounds" to doubt a person's right to reside under the Regulations.

6. In contrast, regulation 20B(1)(b) is only engaged where an application for documentation is made. Whilst there should be some basis on which to ask for additional information there is no requirement for the case worker to have reasonable doubt.
7. Under either 20B(1)(a) or (b) the Secretary of State may invite ‘Person A’ to:
 - a) provide evidence to support the existence of a right to reside, or to support an application for documentation; or
 - b) attend an interview with the Secretary of State.

8. For example, as a result of intelligence reports there are reasonable grounds to suspect an EEA national is not in fact working as claimed. In these circumstances the EEA national may be asked to either provide evidence of their work (such as payslips or an employment contract) or attend an interview to help verify their claim.

Where the right to reside is on the basis of a relationship with another person

9. In addition, if ‘Person A’s’ claim to have a right to reside is on the basis of a relationship with another person (“Person B”), the Secretary of State may invite ‘Person B’ to:
 - a) provide information about their relationship with ‘Person A’; or
 - b) attend an interview with the Secretary of State.
10. For example, a person is applying for a residence card based on their marriage to an EEA national. The Secretary of State may invite the EEA national spouse to an interview to establish the relationship and verify the claim.

Failure to comply

11. In line with regulation 20B(4), the Secretary of State may draw any factual inferences about ‘Person A’s’ entitlement to a right to reside if, without good reason, a person fails to:
 - a) provide the additional information requested or,
 - b) attend an interview on at least two occasions, if so invited
12. This means that if there is other evidence to suggest that the person does not have a right to reside, then combined with the failure by that person to provide evidence to substantiate their claim, it can be considered on the balance of probabilities, that the person does not have, or ceased to have, a right to reside under the Regulations.

13. It is important to note that the Secretary of State must not decide that a person does not have, or ceased to have, a right to reside on the sole basis that the person failed to comply with this regulation. There must be additional grounds to suggest there is no right to reside; in practice these will be usually be the grounds which prompted the request for additional information or attendance at interview.
14. For example, a person has applied on the basis of their marriage to an EEA national. However there is evidence that the marriage may not be genuine as the parties to the marriage have never met, do not speak a common language and got married by proxy. The applicant is invited to attend an interview to address these concerns, but fails to attend on two occasions. In this scenario the case worker may draw an inference that the person does not have a right to reside, taking into consideration the failure to attend the interview and the other evidence.

Appeal rights

15. A person will have a right of appeal against any decision subject to the restrictions in regulation 26.
16. Where the applicant lodges an appeal against such a refusal, and their appeal against the decision to refuse is unsuccessful, any further application which is made on the same grounds can be refused and certified under regulation 26(5).
17. If you have any queries about this notice, please contact <REDACTED – section 40(2)> on <REDACTED – section 40(2)>, or email the European Operational Policy Mailbox at EuropeanOperational@UKBA.gsi.gov.uk

<REDACTED – section 40(2)>
Head of European Operational Policy
1st January 2014