

# EUSS AND FAMILY BREAKDOWNS:

What does that mean for  
settlement



# PRESENTERS

Sandra Akinbolu | Barrister | The 36 Group

Sandra is an experienced and approachable practitioner, specialising in Immigration, Asylum and Public law. Ranked as a Leading Junior by Legal 500 and Chambers & Partners, she is approachable, knowledgeable and committed to the interests of her clients.

Tom Wilding | Barrister | The 36 Group

Tom practises in asylum, immigration and nationality law, and sits part time as a Deputy Judge of the Upper Tribunal, as well as a fee paid Judge of the First Tier Tribunal. He also practises in Employment, Education, Regulatory and Public law matters. He is thorough and experienced in the full range of immigration and asylum matters.

# Overview

Extensions – general rules

Death of EU national

Partners - Family breakdown

- Separation
- Domestic Violence

Children

Dependent relatives

Practical Tips

# EXTENSIONS/ ALLOWED APPEALS/ SETTLEMENT

- Continuous qualifying period
- Those with family permits have 3 months from entry
- Extensions must be made before PSS expires
- Extensions permitted from other LTR

# EXCEPTIONS

Child born/adopted after 1 April 2021

- Within 3 months of birth/adoption

Surinder Singh family members 9 March 2022

- If relationship existed before 31 January 2020
- Limited Family members

Specified spouse or civil partner of a Swiss citizen

- Marriage/Partnership contracted before 1 Jan 2026

# DEATH OF EU NATIONAL

Applies to both family members and joining family members

- Family member has resided in UK for at least a year before death of relevant EEA citizen/qualifying Brit
- Applies to all family members
- Includes dependent relatives, as long as documented as such
- Will be eligible to settle after 5 years, including any period spent before death of EU relative

# DEATH OF EU NATIONAL

Settlement as the “Family member of relevant sponsor who has died”

- Relevant sponsor was a worker/self-employed at time of death
- EEA national resident in UK for 2 years prior to death
- Death due to accident or occupational disease
- Family members lived with relevant sponsor immediately before death
- Not required to wait 5 years

# FAMILY BREAKDOWNS – DIVORCE/SEPARATION

Ceased to be family member on termination of marriage or civil partnership  
Partner of relevant EEA citizen/ qualifying Brit citizen/ relevant sponsor  
Resident in the UK at the date of the termination

Either

- prior to initiation of divorce proceedings, marriage or partnership had lasted at least 3 years and parties continuously in the UK for at least 1 year during its duration; or
- has custody of a child of the relevant sponsor; or
- has a court ordered right of access to that child who is under 18
- the continued right of residence is warranted by particularly difficult circumstances

Eligible for ILR/ILE after 5 years continuous qualifying period



# FAMILY BREAKDOWNS – DOMESTIC VIOLENCE/ABUSE

## Family member who has retained the right of residence

- Divorce due to “particularly difficult circumstances, such as where A or another family member has been a victim of domestic violence or abuse whilst the marriage or civil partnership was subsisting”
- Family relationship permanently broken down due to domestic violence or abuse
- Was resident in UK when relationship broke down

## No specified evidence

### Evidence - *Amos v SSHD [2011] EWCA Civ 552*

- Burden remains on Appellant to prove
- Tribunal may direct SSHD to assist Appellant in proving presence of EEA national

# FAMILY BREAKDOWNS – DOMESTIC VIOLENCE/ABUSE

## ILR as Victim of domestic violence

### DVILR

- Granted limited leave under Appendix EU
- During period of leave, relationship broke down as a result of domestic violence
- Subject to Suitability grounds

Those previously granted under Appendix EU also eligible for DDVC

# FAMILY BREAKDOWNS – DOMESTIC VIOLENCE/ABUSE

## Compare

Appendix EU	DVILR
Must reside 5 years total before settlement	ILR on grant
Must prove EU national in country when apply for divorce	No need for divorce
Reasonable enquiries should be made before refusal	Enquiries rare
Right of appeal if refused	Admin review if refused, unless HR claim made

# CHILDREN

Who and what is a child?

- (i) an adopted child of; or
- (ii) a child born through surrogacy (where recognised in UK law or Islands law) for; or
- (iii) a child in respect of whom a special guardianship order (within the meaning of section 14A(1) of the Children Act 1989) is in force appointing as their special guardian; or
- (iv) a child in respect of whom an order has been made under section 5 of the Children Act 1989 appointing as their guardian; or
- (v) a child subject to a permanence order made under section 80 of the Adoption and Children (Scotland) Act 2007 vesting parental responsibilities and parental rights in a person who is; or
- (vi) a child who has a guardian appointed under section 7 of the Children (Scotland) Act 1995, or who is living with a person pursuant to an order made under section 11 of that Act, and that guardian or other person is; or

# CHILDREN

Who and what is a child (cont'd)?

- (vii) a child in respect of whom an order has been made under Article 159 of the Children (Northern Ireland) Order 1995, or in respect of whom an appointment has been made under Article 160 of that Order, appointing as their guardian a person who is; or
- (viii) a child who has a guardian appointed under section 12 or 14 of the Children (Guernsey and Alderney) Law 2008 or section 12 or 13 of the Children (Sark) Law 2016, or who is living in the care of a person pursuant to an order made under section 14 of the 2008 Law or section 13 of the 2016 Law, and that guardian or other person is; or
- (ix) a child in respect of whom an order under Article 7 of the Children (Jersey) Law 2002 is in force appointing as their guardian; or
- (x) a child in respect of whom a special guardianship order (within the meaning of section 17A of the Children and Young Persons Act 2001 of Tynwald) has been made appointing as their special guardian; or
- (xi) a child in respect of whom an order has been made under section 6 or 7 of the Children and Young Persons Act 2001 of Tynwald appointing as their guardian, a relevant EEA citizen (or, as the case may be, a qualifying British citizen or a relevant sponsor) or their spouse or civil partner, but 'child' does not include a child cared for by a relevant EEA citizen (or, as the case may be, by a qualifying British citizen or by a relevant sponsor) or their spouse or civil partner solely by virtue of a formal or informal fostering arrangement;

# CHILDREN

- most cases will be straight forward

(a) the direct **descendant under the age of 21 years** of a relevant EEA citizen (or, as the case may be, of a qualifying British citizen or of a relevant sponsor) or of their spouse or civil partner; or

(b)(i) the direct descendant **aged 21 years or over** of a relevant EEA citizen (or, as the case may be, of a qualifying British citizen or of a relevant sponsor) or of their spouse or civil partner; and

(ii) (unless **the applicant was previously granted limited leave to enter or remain under this Appendix as a child on the basis that sub-paragraph (a)** above applied or under its equivalent in the Islands on that basis) dependent on (as the case may be):

# CHILDREN

What options where a marriage has broken down and the child is not the child of an EEA national

Rules are silent on step children – do they remain step children of an EEA national even after divorce?

Worth exploring in any application?

However also consider:

# CHILDREN

Retained rights section:

(e) the applicant (“A”) is an EEA citizen (in accordance with sub-paragraph (a) of that entry in this table) or non-EEA citizen who:

(i) provides evidence that a relevant family relationship with a relevant EEA citizen (or, as the case may be, with a qualifying British citizen or with a relevant sponsor) has broken down permanently as a result of domestic violence or abuse; and

(ii) was resident in the UK when the relevant family relationship broke down permanently as a result of domestic violence or abuse, and the continued right of residence in the UK of A is warranted where A or another family member has been a victim of domestic violence or abuse before the relevant family relationship broke down permanently



# CHILDREN

Confusingly, the answer is found buried at the foot of the definition of “relevant EEA citizen”

in addition, notwithstanding what is said above, in relation to subparagraphs (a) to (f) above, it will suffice that the relevant EEA citizen is (or, as the case may be, for the relevant period was) resident in the UK and Islands for a continuous qualifying period which, unless they are a specified relevant person of Northern Ireland, began before the specified date where the applicant:

(a)(i) is (or, as the case may be, for the relevant period was) a family member of a relevant EEA citizen or a family member who has retained the right of residence by virtue of a relationship with a relevant EEA citizen;

# CHILDREN

So for a child:

If separation of parents but no divorce – they remain a child of an EEA national or their spouse

If divorce and rights have been retained – their parent is deemed to be a 'relevant EEA citizen'

# DEPENDENTS

Hopefully more straight forward

Dependency does not need to continuously be proven

Two types of dependent recognised under the rules:

- dependent parents
- other dependents (old style 'OFM's' under Regulation 8 EEA Regulations 2016)

# DEPENDENTS — DEPENDENT PARENTS

The previous discussion re: relevant EEA citizen applies equally to dependent parents

Dependency does not need to be proven again

So if in the case of a divorce — same principle appears to apply to dependent parents

# DEPENDENTS — OTHER FAMILY MEMEBRS

OFMs have their own section in the definitions

Important to keep in mind these people must have been issued with a residence card under the EEA regulations to satisfy the provisions of the rules

But once that is established, dependency is dispensed with given wording looked at in EU4

# DEPENDENTS — OTHER FAMILY MEMEBRS

the person:

(a)(i)(aa) is a relative (other than a spouse, civil partner, durable partner, child or dependent parent) of their sponsoring person; and

(bb) is, or (as the case may be) for the relevant period was, a dependant of the sponsoring person, a member of their household or in strict need of their personal care on serious health grounds; or

(ii) is a person who is subject to a non-adoptive legal guardianship order in favour (solely or jointly with another party) of their sponsoring person; or

(iii) is a person under the age of 18 years who:

(aa) is the direct descendant of the durable partner of their sponsoring person; or

(bb) has been adopted by the durable partner of their sponsoring person, in accordance with a relevant adoption decision; and

(b) holds a relevant document as the dependent relative

# DEPENDENTS — OTHER FAMILY MEMEBRS

in addition, ‘sponsoring person’ means:

(a) (where sub-paragraphs (a)(i) and (b) above apply):

(i) a relevant EEA citizen (in accordance with the applicable entry in this table); or

(ii) the spouse or civil partner (as described in sub-paragraph (a) of the entry for ‘family member of a relevant EEA citizen’ in this table) of a relevant EEA citizen (in accordance with the applicable entry in this table); or

(iii) a qualifying British citizen; or

(iv) the spouse or civil partner (as described in sub-paragraph (a)(i) or (a)(ii) of the entry for ‘family member of a qualifying British citizen’ in this table) of a qualifying British citizen; or

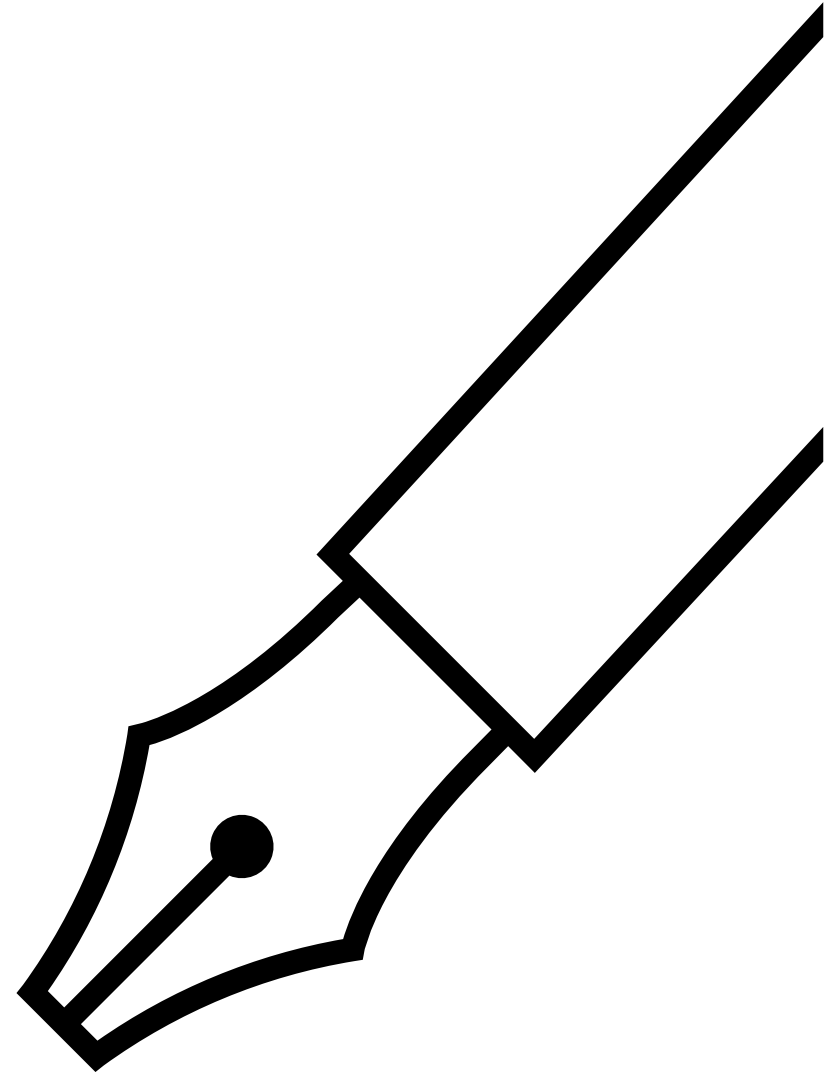
(b) (where the first sub-paragraph (a)(ii) in this entry and sub-paragraph (b) above apply or the first sub-paragraph (a)(iii) in this entry and sub-paragraph (b) above apply):

(i) a relevant EEA citizen (in accordance with the applicable entry in this table); or

(ii) a qualifying British citizen

# PRACTICAL TIPS /QUESTIONS

---





# CONTACT DETAILS



T: 020 7421 8000

E: [clerks@36public.co.uk](mailto:clerks@36public.co.uk)

W: <https://36group.co.uk/>

Sandra Akinbolu- [sakinbolu@36public.co.uk](mailto:sakinbolu@36public.co.uk)

Tom Wilding- [twilding@36public.co.uk](mailto:twilding@36public.co.uk)



DGLLEGAL

Services for Lawyers

T: 01509 214 999

E: [info@dglegal.co.uk](mailto:info@dglegal.co.uk)

W: [www.dglegal.co.uk](http://www.dglegal.co.uk)