**October 2016**

**QUESTIONS AND ANSWERS – UK PERMANENT RESIDENCY AND CITIZENSHIP**

The University hosted two information sessions during September for staff concerned about their official status in the UK, as a result of the vote to leave the European Union (EU). These were led by Emma Brooksbank, a partner and Head of Immigration at Leeds solicitors Simpson Millar.

The following questions and answers represent some of the issues raised during the two meetings and give general guidance for colleagues. If you have specific questions relating to your own status you are encouraged to speak to the University’s Human Resources (HR) Department and make your own enquiries with a solicitor or the Citizens’ Advice Bureau.

Overall, the advice given during the sessions was that it is likely there will be changes so it is best to secure your position as much as is possible.

There are two main options: Permanent Residency and citizenship.

Permanent Residency (PR) is achieved automatically as an EU citizen, after a continuous period of five years living in the UK as a ‘qualified person’.

A qualified person is defined as follows:

1. A worker
2. A self-employed person
3. A jobseeker
4. A student with comprehensive sickness insurance
5. A self-sufficient person with comprehensive sickness insurance

It is possible to be out of the country for certain periods of time without this breaking your continuous residence. As a rule of thumb, you are permitted to be absent from the UK for six months in a year, or have one block of 12 months for a good reason, such as an overseas posting.

Application can be made for a Permanent Resident card. This only provides recognition of an individual’s automatic rights under EU law.

Citizenship is a more formal process. Since November 2015, European Economic Area (EEA) nationals must hold a Permanent Residence (PR) card to apply for citizenship.

**QUESTIONS**

**What is the position regarding family members and PR?**

If your partner and children are British citizens, they do not have to apply for PR as they have a right of abode in the UK as British nationals. If they are non-UK EU citizens or third country national family members of an EEA national they may be able to apply for PR at the same time. They would need to meet the qualifying criteria.

**How do I prove that I have been exercising my Treaty Rights as a worker when applying for PR?**

When you apply for PR, you will need to satisfy the Home Office that you have completed a five-year period as a qualified person. If you have been a qualified person as a worker, you would need to provide evidence of this. This can include bank statements showing salary payments, P60s, payslips, a contract of employment, a letter from your employer confirming that you are or have been employed by them and the start and end dates (as applicable) of your employment. You can also apply to HMRC for your employment history for the qualifying five-year period.

**If I am currently unemployed or have gaps between employment, what is my position?**

If you are a job seeker, you must be registered with JobCentre Plus. If you are self-sufficient, so have sufficient resources to rely upon without becoming an undue burden on the social assistance system in the UK, you must hold Comprehensive Sickness Insurance (CSI).

**Does getting PR for me automatically mean my family also receive it, if I have no CSI?**

You only need CSI if you have been a qualified person as a student or self-sufficient person. If you have not held CSI when it was required, this period of residence will not have been in accordance with the regulations and will not count towards the qualifying period for PR. Securing PR does not mean that your family with automatically receive it. They will need to meet the qualifying criteria, which includes, but is not limited to, completing a qualifying five-year period of residence.

**Do I need CSI just at the time of my application, or for the full five years I am claiming as my right to PR?**

If you are intending on relying on your time as a student or self-sufficient person, you must have CSI for the full five years which you are relying on for your claim. If you do not have this, you may need to wait until you have CSI for a full five year period. Alternatively, you may look to see if you qualify during the qualifying period as a worker, self-employed person or jobseeker.

**I have been a student at Leeds for several years, without CSI, but I have been studying for a PhD and at the same time working for the University. What is my status?**

If you are a student and a worker, there is no need for CSI as you can rely on your worker status which does not require this. You would need to show that your work had been ‘genuine and effective’ and not just a few ad hoc hours.

**Should I advise current Leeds students who are from the EU to apply for CSI insurance?**

Yes. The Home Office will accept the following: a comprehensive private medical insurance policy document, a valid European Health Insurance Card (EHIC) issued by an EEA member state other than the UK (for people temporarily in the UK), form S1, form S2, or form S3. For EEA nationals who intend to rely upon an EHIC, they must also provide a statement of intent that they intend to return to their home country.

**I am reluctant to send personal documents such as passports to the Government.**

You can use your original national ID card as an alternative to sending your original passport. If you do not hold an ID card, you may opt to send your passport and then make an application for it to be returned.

**As it is not mandatory to apply for Permanent Residency (PR) using the official form, can I write to the Home Office in a letter?**

It is acceptable, although a letter may miss out important details. It depends how confident you are in making your case and including all the information that is required. Although the official form is lengthy, the best advice is to use it as it will cover all questions the Home Office may have.

**If I don’t want to apply for citizenship, do I have to apply for a PR card? What are the benefits of citizenship?**

There is no requirement to apply for a card as the status of PR is automatically acquired once a five-year qualifying period has been completed. With the uncertainty of the UK’s departure from the EU, you may opt to apply for a PR card.

You do not have to become a British citizen, it is a choice. The benefits of citizenship are that you can vote in parliamentary elections, access consular services overseas, and it may make overseas travel to certain countries more straight forward. Citizenship is not essential, but in a changing environment it may be wise to protect yourself.

**If I apply for British citizenship, does it affect any other nationalities I may have?**

Not from a UK government perspective; the Home Office is happy for people to have multiple nationalities. This might not be the same for other governments and you should check with your own national authorities before applying for citizenship. Securing British citizenship can adversely affect your rights as an EU citizen and the rights of your family members, so you should take advice on this point before applying for citizenship.

**I have been in the UK for many years but have changed jobs several times. Does the five-year period classified as a worker have to be the most recent five years?**

No, any period of five years is fine because you will have automatically secured PR as soon as a five-year qualifying period has been completed.

**If I leave the UK and study abroad for several years, ie, for a PhD, what would happen to my PR status?**

You would lose your status if you were out of the country for more than two years, or if you committed a serious crime and the Home Office decide to remove your status and deport you.

**When might a PR card be mandatory?**

It is not mandatory to have one, but it is required if you apply for citizenship. Due to fears about employing illegal workers, many small businesses are asking to see a PR card, although there are questions about whether this is lawful.

**What is the level of evidence required for PR?**

You must be able to prove you are an EU national, and that you have been a ‘qualified person’ living in the UK for five years. Proof depends on the category you are applying in, eg, student / worker, but may include written evidence from the University/employer, eg, a P60, payslips, a degree certificate or a written letter confirming your period of employment. You only need to provide sufficient evidence, it does not need to be exhaustive.

**What constitutes ‘family’ for the purposes of PR?**

Your individual family members must have each been here for five years in their own right. ‘Family’ comes in two parts as far as the government is concerned:

* Direct – Spouse or civil partner, children up to the age of 21 and family members in the ‘ascending line’, eg, parents who are dependent upon you
* Extended – unmarried partners where you have cohabited for more than two years, other family members, such as nieces and nephews who are part of your family, ie, if they have lived in the family home with you. Any family member who is dependent on you or a member of your household.

**I have children under five-years-old who have not been alive long enough to reach the five- year PR requirement.**

Any child not born in the UK must live in the UK in compliance with the regulations for five years before they are eligible for PR. For children born in the UK, they may be eligible for registration as a British citizen once their parents obtain PR.

**I am a student but have also carried out part-time work, could I apply for PR as a worker?**

If you are attempting to apply as a worker, you need to show your work was ‘genuine and effective’ and provided enough money to live on. Typical part-time student work in bars or shops may not qualify. If you are applying as a worker, you would also need to have no significant gaps in your employment history. For gaps of less than six months you can provide evidence to show you were a jobseeker, provided you were registered with the Job Centre. If there are any gaps of more than six months, you will need to show that you had a genuine chance of obtaining employment.

**I have been in the UK for much longer than five years, and do not want to use my first five years here when I was a student as the period of my PR. However, the application form asks for the date when I arrived in the country. What should I do?**

Firstly, it does not matter if you entered the country years before your qualifying period. So long as you can show the Home Office that you have a five-year period as a qualified person and you have not lost your PR, they must issue you with a PR document. Secondly, the application form is not mandatory, so you could choose not to use it but to apply by a personal letter setting out the information required. If you do use the form, you must be truthful. You would need to state the actual date on which you arrived but then explain that you are relying on a five-year period with a start date which falls after the date of your first arrival.

**I cannot remember the dates when I have been out of the country during the past five years.**

Try to find out; for example, by looking back at emails of flight bookings, hotel bookings, etc.

However, the Home Office is only concerned about periods of absence of six months or more which would effectively break your continuous residence. When you are calculating absence, do not include travel days, eg, when you were either going out of or coming into the country.

**If I become a PR but then leave the UK for a period of time, can I still return as a PR?**

Yes, as long as the period of time you are away is less than two years.

**Can I use the fact of having British-registered children to prove my own residency status?**

Yes potentially. There are options under domestic legislation (the Immigration Rules) and under European Law. You would need to take advice to weigh up these options.

**I am an EU national living in the UK and applying for PR. I am married to an EU national who has not lived in the UK for five years.**

Your spouse will still need to live in the UK under the EU regulations for a five-year period before they can apply for PR. They can apply in their own right or as the spouse of an EEA national with PR. Be aware that if you then naturalise and obtain British citizenship, you will effectively lose your rights as an EEA national and your spouse cannot rely on your status to support an application for PR. They will have to apply in their own right.

The University’s HR Department will be happy to provide written evidence of employees’ status if needed. Please email hr@leeds.ac