

Family members of EU citizens in the UK have lost travel rights

What is the problem?

Consider the following family:

- a Dutch citizen Amina, living in the UK, with a Somali husband Omar
- they have a Dutch child Noor who now lives in the Netherlands

Amina and Omar regularly visit their daughter Noor in the Netherlands.

Through the benefit of the EU Free Movement Directive, Omar was always able to accompany Amina to the Netherlands without having to apply for a visa – by using his UK issued EEA Residence Card.

Since January 2021 however, he must now apply for a visa for each visit to see his own daughter.

His EEA Residence Card is no longer valid, and his new EU Settlement Scheme Residence Card will not be recognised by the EU – even though it displays the words “*Issued under the EU Exit Separation Agreements*”.

Applying for a visa will take time and effort, and in some cases not insignificant cost – as Omar will not even benefit from facilitated visa applications if travelling to Amina’s country of nationality, the Netherlands.

We have also heard reports of lengthy delays when family members apply for such visas from various EU member-state consulate in the UK, leading to many delayed trips, or inability to travel to the EU for a family emergency.

What is the answer?

The EU could simply decide to accept the EU Settlement Scheme Residence Card as a valid card for travel purposes.

- Normally third country national (TCN) residence cards are not accepted by Schengen border guards. However, *this* TCN residence card (the UK’s EU Settlement Scheme residence card) is special since it bears the wording ‘*Issued under the EU Exit Separation Agreements*’. Despite the UK no longer being part of the EU, these cards are specifically bound to an international treaty involving the EU.
- Adding these cards to the list of documents in the manual used by Schengen border guards is a simple unilateral decision that the EU could take to the great benefit of its own citizens and their family members resident in the UK.
- The relevant section would be Part III, Chapter 2.2 (p 97) of the [Annex to the Handbook for the for the processing of visa applications](#).
- It surely cannot be the EU’s intention to put barriers in the way of EU citizens and their families being able to visit each other – family reunion rights are at the heart of the Free Movement directive.

Please see overleaf for a more in-depth explanation of the legal and process details.

Before January 2021:

- Amina could travel to any EU Member State accompanied by Omar
- Omar only needed to carry his passport and a UK issued 'EEA Residence Card' which was marked with the wording '*Residence card of a Family Member of a Union Citizen*', in accordance with Article 10 of the Free Movement Directive
- even though Omar, being Somali, would ordinarily require a visa (see [Annex I in Regulation \(EU\) 2018/1806](#)), this card removed the need to obtain a visa
- two illustrations of such cards are below – note their wording along the bottom (**Residence card of a Family Member of a Union Citizen**):



After January 2021:

- Omar's UK issued 'EEA Residence Card' is no longer valid.
- Omar will have applied for a new UK immigration status under the EU Settlement Scheme and been issued with a biometric residence card to evidence this new UK immigration status.
- This residence card is marked with the wording '*Issued under the EU Exit Separation Agreements*', in accordance with the Withdrawal Agreement, Article 18(1)(q).
- This card is currently **not accepted** as a travel document to the EU.
- Therefore, Omar must apply for a visa whenever he travels to the Netherlands to visit his daughter, or to visit another EU Member State, regardless of whether he accompanies Amina or travels alone.
- If Omar accompanies Amina to an EU Member State other than the Netherlands, he should benefit from visa facilitations provided for in Article 5(2) of the [Free Movement Directive](#) – free and on the basis of an accelerated procedure. However, we have seen reports where this accelerated procedure can take many weeks and sometimes even months.
- Moreover, if Omar wants to accompany Amina to visit his daughter in the Netherlands, he is [not able to benefit from visa facilitations](#), as Amina is Dutch. Article 5(2) does not apply to citizens traveling to their own country. This means he will have to pay for a visa, and the process can take a long time.
- The details above are confirmed in the a [European Commission letter to the3million](#).
- An illustration of an EU Settlement Scheme residence card is below – note the wording along the bottom '*Issued under the EU Exit Separation Agreements*':

