

By email:

The Rt Hon Robert Jenrick MP - Minister for Immigration
Lord Murray of Blidworth - Parliamentary Under Secretary of State at the Home Office

CC:

Home Office SUG team
Home Office Status & Information Services
Independent Monitoring Authority

7 June 2023

Dear Robert Jenrick MP and Lord Murray,

Digital Status of EU Settlement Scheme after refusal decision

We are writing to you today to highlight a serious problem for people who do not realise that their application for status under the EU Settlement Scheme has been refused, because the decision is only sent by email, and their online digital status continues to state that their application is pending.

As we shall go on to evidence, emails are not guaranteed to reach recipients' inboxes. There will therefore be a cohort, often vulnerable people, who will miss the opportunity to exercise their Withdrawal Agreement right of appeal to challenge an incorrect refusal simply because they did not know their application was refused, and their time window to appeal has closed.

I refer to the [IMA statement](#)¹ that was issued on 22 May 2023, concerning applicants to the EU Settlement Scheme [EUSS] who received a refusal decision but whose UKVI accounts continued to show a Certificate of Application (CoA) rather than a refused status.

The statement includes the following:

“The Home Office has indicated that prior to April 2022, the EUSS digital status system did not have the capability to reflect that an administrative review or appeal was pending in respect of an individual’s case. As a result, the IMA understands that a decision was taken to suspend reflecting ‘refused’ status on UKVI accounts to ensure individuals could continue to access WA rights while any administrative review and/or appeal was pending. From April 2022, the ability to reflect pending administrative reviews and appeals was possible. Refusal decisions made from this point were reflected on digital status.”

On the face of it, this suggests that people who have an administrative review [AR] or appeal pending can log into their UKVI account and see some indication on their status that an AR / appeal is pending.

We are unaware of functionality within the digital status that shows a person has an AR / appeal pending. What we understand from practitioners is that the status remains pending if an AR / appeal is lodged, with

¹ <https://ima-newsroom.prgloo.com/news/ima-statement-on-work-to-address-concerns-raised-with-eu-settlement-scheme>

no reference to the challenge that has been made. Having said that, we are still seeing reports of people with in-time ARs whose digital status shows refused.

We are therefore assuming that the current **intended** functionality for someone who progresses through an application that is refused, then submits an AR and/or appeal which is finally refused is as follows:

STAGE 1: After someone submits a valid EUSS application, their UKVI account shows their application is **PENDING**, and they can generate share codes for proof of right to work, proof of right to rent, and general proof of rights to 'something else'. This is also known as a digital Certificate of Application [CoA]

STAGE 2: If the Home Office makes a decision to refuse the application, the applicant is sent an email informing them of the refusal decision and their rights to AR and/or appeal. The UKVI account continues to show **PENDING** status (as in stage 1) for a specific time window, to give the applicant time to apply for an AR or submit an appeal. The applicant can continue to generate share codes (as in stage 1). We understand this time window is 40 days. If the applicant fails to submit a challenge to the refusal decision within this window, the UKVI account will change and show **REFUSED** status.

STAGE 3: If the applicant submits an in time application for AR and/or appeal, the UKVI account continues to show **PENDING** status and the applicant can continue to generate share codes (as in stage 1) until there is a negative decision on their AR and/or appeal. Once a negative decision is received, the time window begins again.

STAGE 4: During the time window, as there is an opportunity for further challenge (for example, submitting an appeal after a negative AR decision, or challenging a disallowed appeal to a higher tribunal), the UKVI account continues to show **PENDING** status and the applicant can continue to generate share codes (as in stage 1). We assume this is again a time window of 40 days.

STAGE 5: Only once this time window expires, if there is no further challenge the UKVI account will change to show **REFUSED** status.

If our understanding of the process is correct, we feel that the lack of accurate information on the digital status is not helpful to the applicant, or to anyone advising or helping the applicant.

This is especially so given that the application scheme is by and large entirely digital, and decision letters are only sent via email.

Validity, a leading provider of email deliverability data, states in its 2023 'Email Deliverability Benchmark'² report that Europe is one of the best performing regions in the world (largely thanks to GDPR regulation), with an overall 'inbox placement rate' of 91%. Nevertheless this still means that **9% of emails do not reach the recipient's inbox** (2% of all emails end up in Spam folders, and 7% of all emails go missing). However, for people who use mailbox providers other than the four global ones (Microsoft, AOL, GMail and Yahoo), the situation is worse - **20% of emails do not reach the recipient's inbox** (10% of emails end in Spam and another 10% of emails go missing). We can corroborate this anecdotally, having heard of many cases where decision

² <https://www.validity.com/resource-center/2023-email-deliverability-benchmark-report/>

letters (or indeed, requests for more information by caseworkers) were eventually found in spam folders, or not received at all.

Even if emails are delivered successfully however, there are many vulnerable applicants to the EUSS who do not have email accounts and who have relied on someone else (sometimes rogue advisers) to make EUSS applications on their behalf. Others may have set up a temporary email address just for the purpose of the application, changed their email address, and/or lost access to a previous email address. In all these cases, people may not have received their decision email, and would want to be able to rely on their digital status accurately reflecting their legal status.

The latest EU Settlement Scheme statistics³ show that as of 31 March 2023, there had been 511,960 refused applications. The most favourable email deliverability data above translates to **46,000 emails with a refusal decision which may not have reached the recipient's inbox.**

When someone does not receive their decision letter, and **also** cannot see that a decision has been made when they log into their UKVI account, they have no way of knowing their legal position, or that they have a very limited time in which to challenge a refusal. A legal advisor logging into their account will also not be able to see that the individual has received a refusal. Combined with the findings of a recent Here for Good report⁴ about lack of clarity in EUSS caseworker communications, it is easy to see how many people may lose the opportunity to successfully achieve the status under the EU Settlement Scheme that they are eligible for.

It is vital that the UKVI account accurately reflects at all times the correct legal status of the applicant. Many people, while waiting anxiously for a decision from the Home Office, will be regularly checking their online status for any information.

It would be far more accurate if, during the five stages detailed above, the UKVI account *as displayed to the applicant* displayed a true reflection of the applicant's legal position, rather than showing PENDING throughout all stages until a final refusal is received. The UKVI account should have a different display for the purposes of third party verification, and PENDING would be an appropriate description of status to display to third parties during stages 1-4¹:

STAGE 1: **PENDING** - no decision made

STAGE 2: **REFUSAL** - but you have until [DATE] to apply for an AR and until [DATE] to submit an appeal. Importantly, it remains possible to generate share codes. Employers and other stakeholders who are checking these share codes should not be able to see there has been a refusal, only that the person has the right to work (rent/other).

STAGE 3: **PENDING ADMINISTRATIVE REVIEW / APPEAL** while AR and/or appeal is being processed. Share codes, and information seen by checking stakeholders is as in STAGE 1 and 2.

STAGE 4: **REFUSAL** of AR / appeal - but you have until [DATE] to appeal to the Upper Tribunal. Share codes, and information seen by checking stakeholders is as in STAGE 1 - 3.

STAGE 5: **FINAL REFUSAL**

³ <https://www.gov.uk/government/statistics/eu-settlement-scheme-quarterly-statistics-march-2023/eu-settlement-scheme-quarterly-statistics-march-2023>

⁴ https://www.hereforgoodlaw.org/files/ugd/a2aa13_b8792551629d4f46976417e582e96818.pdf

In each of the stages 1-4, it must be possible, as is the case now, to successfully generate share codes. The purpose of showing these stages is for the benefit of the applicant and their legal advisors. Information that the employer, landlord or other checking service needs to see, must be simply that the person has the relevant right (i.e. a positive verification via View and Prove). Only in stage 5 would an employer, landlord or other checking service see a refusal.

We therefore wish to ask the following questions:

- Q1. Is our understanding of the current assumed process as set out in stages 1-5 on page 2 above correct? If not, please let us know what the current intended process is.
- Q2. We have been informed of cases where the UKVI account is not displaying a status according to the intended process. For example, people with an pending in-time AR whose UKVI status is currently showing as REFUSED. Given that the IMA statement says that the system was fixed in April 2022, and a retrospective exercise was undertaken to correct affected statuses in January 2023:
 - a. What is the reason for any EUSS UKVI accounts to currently show an incorrect status?
 - b. How many accounts do you estimate are currently showing an incorrect status?
 - c. What work is still being undertaken to correct accounts showing an incorrect status?
- Q3. During STAGES 2 and 4 above, i.e. the time window between a refusal decision and a submission of an admin review / appeal, do you agree that it is essential that people know about their legal situation in order to benefit from the safeguards and right of appeal as set out in Article 21 of the Withdrawal Agreement?
- Q4. Do you agree that by relying only on informing people of refusals by email – *which is acknowledged by experts to have a 9% overall failure rate (20% if people have their email accounts with anyone other than the four global providers), and in other cases people do not / no longer have access to the relevant email address* – the Home Office will not be able to serve all decisions on applicants and as such, will prevent some people from exercising their right of appeal as set out in Article 21 of the Withdrawal Agreement if they do not accurately display a person's legal status on their digital UKVI account?
- Q5. During STAGES 2 and 4 above, we understand the time window is 40 days, whereas the maximum window to submit a challenge (AR/appeal) is 28 days. If people do **not** go on to submit an admin review / appeal (because they were unaware of the refusal decision sent by email), can you confirm the exact date at which they become liable to NHS treatment charges and recovery of Universal Credit? Is it at the refusal decision date, 28 days after the refusal decision date, 40 days after the refusal decision date, the date at which the digital status shows REFUSED, or another time point?
- Q6. If people become chargeable any sooner than the date at which their digital status shows REFUSED, do you agree that for those thousands of people who may not have received their refusal decision letter by email, they could potentially be exposed to financial liabilities outside their control, perhaps taking decisions (such as accepting secondary NHS treatment during an decision challenge time window that they were completely unaware of) that worsened their situation without having had the information at their disposal to inform those decisions?

- Q7. Given that the clear implication of the current intended functionality is that the UKVI digital status has at its disposal all the necessary information (refusal date, time windows, pending admin review and/or appeal), will the Home Office change the display to the applicant during STAGES 2 and 4 to fully inform people (and their advisors) of their legal position in order to comply with Article 21 of the Withdrawal Agreement?
- Q8. Given that the Home Office also has applicants' postal addresses and telephone numbers, will you consider supplementing the current decision delivery mechanism of a single email with, for example, daily email and text message alerts informing people they have a decision and that they must act within the relevant time window if they want to exercise their rights of appeal under Article 21 of the Withdrawal Agreement?

Kind regards,

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HERE FOR GOOD

