

2003 No. 3188

IMMIGRATION

**The Immigration (European Economic Area) (Amendment
No. 2) Regulations 2003**

Made - - - - - *8th December 2003*
Laid before Parliament *10th December 2003*
Coming into force - - - *1st January 2004*

The Secretary of State, being a Minister designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to measures relating to rights of entry into, and residence in, the United Kingdom, in exercise of the powers conferred on him by the said section 2(2), and of the powers conferred on him by section 109 of the Nationality, Immigration and Asylum Act 2002(c), hereby makes the following Regulations:

Citation and commencement

1.—(1) These Regulations may be cited as the Immigration (European Economic Area) (Amendment No. 2) Regulations 2003 and shall come into force on 1st January 2004.

(2) Regulation 2(3)(b) shall not have effect in relation to the rejection of an asylum claim before 1st January 2004.

Amendment of Immigration (European Economic Area) Regulations 2000

2.—(1) The Immigration (European Economic Area) Regulations 2000(d) are amended as follows.

(2) For regulation 6(2B)(b) (family member) there is substituted—

“(b) descendants of his or of his spouse who are under 21 or are their dependants, provided that they were attending an educational course in the United Kingdom when the qualified person was residing in the United Kingdom and are continuing to attend such a course.”.

(3) In regulation 33 (appeals under the 2002 Act)—

(a) at the beginning of that regulation there is inserted—

“(1A) An appeal under section 82(1) of the 2002 Act shall be treated as abandoned if the appellant has been issued with a residence permit or a residence document.”;

(b) for paragraph (1) there is substituted—

“(1B) Subject to paragraph (1C), a person may appeal to an adjudicator under section 83(2) of the 2002 Act against the rejection of his asylum claim where—

(a) that claim has been rejected, but

(a) S.I. 2000/1813.
(b) 1972 c. 68.
(c) 2002 c. 41.
(d) S.I. 2000/2326; the relevant amending instrument is S.I. 2003/549.

(b) he has a right to reside in the United Kingdom under these Regulations.

(1C) Paragraph (1B) shall not apply if the person is an EEA national and the Secretary of State certifies that the asylum claim is clearly unfounded.

(1D) The Secretary of State shall certify the claim under paragraph (1C) unless satisfied that it is not clearly unfounded.”.

(4) For Schedule 2 (appeals to an adjudicator) there is substituted—

“SCHEDULE 2

APPEALS TO AN ADJUDICATOR

The following provisions of, or made under, the 2002 Act have effect in relation to an appeal under these Regulations to an adjudicator as if it were an appeal against an immigration decision under section 82(1) of that Act:

- section 84(1) (except paragraphs (a) and (f) and (2);
- sections 85 to 87;
- sections 101 to 103;
- section 105 and any regulations made under that section; and
- section 106 and any rules made under that section.”.

Home Office
8th December 2003

Beverley Hughes
Minister of State

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Immigration (European Economic Area) Regulations 2000 (“the 2000 Regulations”). These Regulations—

- (a) amend the conditions under which children who are under 21 or dependants may be treated as family members notwithstanding that the EEA national parent from whom they derive their rights has ceased to be a qualified person on ceasing to reside in the United Kingdom (*regulation 2(2)*);
- (b) provide that the right of appeal under section 82(1) of the Nationality, Immigration and Asylum Act 2002 (“the 2002 Act”) (general right of appeal) is abandoned if the appellant is issued with a residence permit or a residence document (*regulation 2(3)(a)*);
- (c) amend the right to appeal against the rejection of an asylum claim where a person has a right to reside in the United Kingdom under the 2000 Regulations by making it subject to the condition that where the person is an EEA national such a right only exists if the Secretary of State does not certify that the asylum claim is clearly unfounded (*regulation 2(3)(b)*); and
- (d) insert a revised Schedule 2 to the 2000 Regulations so that it includes a reference to sections 105 and 106 of the 2002 Act and the regulations and rules made thereunder; this will allow regulations requiring a person to be given written notice in respect of an immigration decision and rules regulating the exercise of appeals under the 2002 Act to apply to appeals under the 2000 Regulations (*regulation 2(4)*).

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