



APPEALS GUIDE



An introduction to the UK Nationals Support Fund Project

The International Organization for Migration (IOM) has been, since June 2020, providing practical support to UK Nationals who may find it harder to complete their residency applications to prove their residency rights in EU countries now that the UK has left the EU.

In Spain, the Project has been supporting UK nationals residing in Spanish territory with a special focus on the Community of Madrid, the Community of Andalusia, the Region of Murcia, Castilla La Mancha, Castilla y León and Extremadura and the autonomous cities of Ceuta and Melilla.

IOM has been providing individual support to people facing specific challenges, such as people living with disabilities, those grappling with chronic illnesses and those facing specific barriers related to language, literacy or access to technology.

1. What to expect from this guide?

Presenting a registration request is not always a straightforward process. Therefore, in this guide, we would like to explain the meaning, reasons, and options you have if you have received a refusal letter from the residency process.

Through some basic questions and answers we hope you can better understand what a refusal means and what you can do about it.

What are the different types of negative outcomes and what do they mean?

Once you have applied for your residence document, the possible non-successful outcomes can be:

- o ARCHIVADO
- o INADMITIDO A TRÁMITE
- o DENEGADO

What can you do if you have received a negative outcome?

You have different options.

1. One possibility is to re-apply with a fresh new application. You should re-apply if your case was archived or inadmitido a trámite and you have more documents to provide, in addition to the ones you originally submitted. If

you decide to re-apply you should know the reason why your previous application was rejected and submit new evidence and documents to address this. Otherwise, your application will be “inadmitida a trámite” as the Immigration office will understand it is an exact replica of the first one, since you are not providing any new documents or information.

The other option you have is to present an appeal to the Immigration office (“Recurso de alzada). If your case has been “denegado”, and you do not have any further evidence to provide, you should appeal. This is an administrative appeal, and means another official will consider your documents and decide whether the original decision was correct.

The goal of an appeal letter is to have the original decision reconsidered, and hopefully overturned.

In the appeal letter, you should state the outcome of your original registration request, explain why you think the decision was incorrect, provide/refer to the documentary evidence that supports your argument and state what you hope the new outcome will be. Your appeal letter is your chance to share your perspective. , You will need to resubmit your documentation to support your arguments

When does it make sense to appeal?

Presenting an appeal makes sense if you feel your case falls under the Withdrawal Agreement, (you were legally residing in Spain before the end of the Transition Period) and you want the immigration office to reconsider the decision regarding your residency application. Remember, 'legally residing' means you had proof of address and proof of being a worker, self-employed or of having sufficient economic means, as well as comprehensive healthcare cover in place, before the end of 2020 or within three months of your arrival if you moved to Spain at the end of 2020. In the UK government's Withdrawal Agreement explainer you can obtain more information on who is eligible.

If your case was rejected due to one of the following reasons, it might be more convenient to present a new residency application rather than appealing.

- o If your case has been rejected because you did not provide enough evidence that you were living in Spain before December 2020, you can submit a new registration request with additional documentation.

- o Factual mistakes

- Lack of evidence of economic means. You should provide any additional proof of bank account statements, work contract in Spain for instance.
- Lack of evidence of proof of address. You should provide any additional proof of: your padrón, utility bills or tenancy contracts.
- Lack of evidence of healthcare policy: you should provide any additional proof of your public or private healthcare coverage in Spain.

Important aspects of the appeal process:

1. You can present the administrative appeal ('recurso de alzada') by yourself; it is not mandatory to use a lawyer. However, you must take into consideration that whatever
- 2.
- 3.
4. grounds you use for this appeal, they cannot be changed on a future possible claim before the Court because you are presenting the legal defense arguments of your case. Therefore, you need a minimum of legal knowledge to state your case and mention on which legal grounds you base your position. Therefore, we strongly recommend you seek legal advice from a lawyer (Abogado).

1. When presenting an appeal, you need to provide the immigration office with your contact details: in the appeal, you must provide your full postal address (you should state it as "Domicilio a efectos de notificaciones" and

2. Remember you need to sign it.

3. The deadline to submit your appeal is a month, counting from the day after you received the letter at your home address in Spain.

4. Where do you present your appeal?

• The appeal must be addressed to the Immigration Office of the province where you live (the same one that made the original residency decision).

You can submit it:

• Personally, at the Immigration Office.

• By post, using the service “correo certificado”. Check your nearest post office here <https://www.correos.es/es/es/herramientas/oficinas-buzones-citypaq/detalle>

• Through any public registry (like town halls, or any other public building which has this service...) you can check the full list of Public registries here https://administracion.gob.es/pag_Home/atencionCiudadana/encuentraTuOficina/OficinasRegistro.html

Wherever you are submitting the appeal, make sure you get an additional stamped copy for your records. This is your valid receipt and evidence that you have submitted it.

On which grounds can I appeal?

It is important to understand the meaning of the concept ‘Legal resident’ under the Withdrawal Agreement in order to understand the grounds on which you can present an appeal. More detailed information can be found on the UK government’s Withdrawal Agreement explainer document. However, the main requirements can be summarised as follows:

- A)** You have proof of address and of physically living in Spain by 31 December 2020, and
- B)** You have proof of sufficient economic means, either as a worker, self-employed person or as someone who is economically self-sufficient, and
- C)** You have proof of comprehensive healthcare cover or insurance

All these requirements needed to be met before the 31/12/2020, or within three months of your arrival in Spain if you moved at the end of 2020. If you

did not meet one of the requirements by the specified timeframe, the immigration office can reject your case on this interpretation.

How long do I have to wait for an answer?

The maximum term to issue and notify the resolution will be three months. If you do not hear anything within this period, the appeal can be considered as unsuccessful.

My application was refused, and I have been told to leave the country in 15 days

If your residency application has been denied, the Immigration Office may issue you with an instruction to leave the country within 15 days. This is called “salida obligatoria”.

You can challenge this and request this period to be extended up to 90 days (which provides you with time to start the appeal process in Court). You would need to show evidence proving that:

- **You have enough economic means to sustain yourself and not to be a burden to the State.**
- The damage that following this order would cause you (for example, your only home is in Spain, you have been here for years, you are sick or suffer any impediment and therefore you cannot return to the UK, etc.)

You must include these arguments in the appeal against the outcome from the Immigration Office. These arguments are called “medidas cautelares”. Note that if you don’t include the “medidas cautelares” in your appeal, you may not have a legal basis to remain in Spain.

My first appeal has been refused. What can I do?

If the administrative appeal is also rejected, you can start a proceeding against the Immigration Office before the Court (this is called Recurso Contencioso-Administrativo).

In this second appeal, you need a lawyer.

If you do not know any lawyer, please contact your nearest BAR association. See the full list here: Andalusia, Ceuta and Melilla, Madrid, Castilla La Mancha, Castilla and León and Extremadura or Murcia)

Once your lawyer has submitted the claim before the Court, a day for the hearing will be set. Legal proceedings are slow in Spain and take time. There is not a legal determinate period in which your case can be heard.

Can I stay in Spain while the appeal in court is in process?

Under the terms of the Withdrawal Agreement, you have a right to pursue your appeal. However, if the original outcome of your registration request included an “Orden de Salida”, an instruction to leave Spain, in addition to submitting your appeal before the court your lawyer must also ask the judge to suspend the instruction to leave. The court will then decide on this request separately.

The decision of the court on this matter will be binding

What can I do if both my appeals have been rejected or if I decide not to appeal?

There are some alternative immigration options under Spanish law you can explore in case your application has been rejected:

If you do not meet the criteria to register as a resident under the Withdrawal Agreement in your own right or as a close family member of a UK national who is already registered, you may wish to apply to reside in Spain under a different immigration status. You can find here a list of free legal advice services who might guide you through the process. Check our guides if you live in: Andalusia,

Ceuta and Melilla, Madrid, Castilla La Mancha, Castilla and León and Extremadura or Murcia)

- Read the Spanish government’s information for non-EU nationals on general immigration routes and the criteria to apply for these.

- Read the Spanish government’s information on obtaining the right to reside under limited, exceptional circumstances, for example for victims of domestic violence or for those who can prove strong links to Spain through family, work or social integration.

Information on returning to live in the UK:

- If you wish to return to live in the UK, read the UK government’s information on returning to live in the UK from Spain, as well as the general information for all UK nationals returning to the UK after living abroad.