

From: European Operational Policy Team
Subject: Regulation 9 (*Surinder Singh* Cases)
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Purpose of Notice

1. This notice must be read alongside notice 05/11 and section 5.5 of chapter 5 of the ECIs. This notice provides guidance to case workers on how to consider applications from the non-EEA national spouse or civil partner of a British citizen who has exercised Treaty rights in another EEA member state.

Background

2. The Immigration (European Economic Area) (Amendment) (No.2) Regulations 2013 were amended on 01 January 2014 to include a new threshold test to tighten the circumstances in which family members of British Citizens can rely on the Court of Justice of the European Union (ECJ) judgment in *Surinder Singh* C-370/90). The *Surinder Singh* judgment was implemented into the 2006 Regulations by way of regulation 9.
3. The new requirement at regulation 9(2)(c) and 9(3) requires the British citizen to have transferred the centre of their life to another EEA member state, where they resided as a worker or self-employed person with their spouse or civil partner before returning to the UK.
4. This change was made to ensure that a British Citizen engages in genuine and effective use of the rights conferred by EU free movement law before a right to reside in the United Kingdom is conferred on a non-EEA family member. The principle behind *Surinder Singh* is the need to ensure that nationals of a Member State are not deterred from exercising Treaty rights through not being able to return to their Member State of origin with third country family members.
5. These amendments came into force on the 01 January 2014 and apply to all applications for documentation on or after that date, however, see Annex A for details of the transitional arrangements.

Consideration

6. Regulation 9(2)(c) requires a British citizen to demonstrate that they have transferred the centre of their life to another EEA member state where they were residing as a worker or self employed person.

7. Regulation 9(3) specifies the factors to be considered when deciding whether a British citizen has transferred the centre of their life to another member state. These include, but are not limited to:
 - a. the period of residence in another EEA member state as a worker or self-employed person;
 - b. the location of the British citizen's principal residence; and
 - c. the degree of integration of the British citizen in the host member state.

The criteria are indicative and it is not necessary to meet all three.

Period of residence in another EEA member state

8. In general, the longer the British citizen has resided in another EEA member state as a worker or self-employed person, the more likely it is that they have transferred the centre of their life to that member state.
9. For example, a British citizen who has lived and worked in another member state for a period of two years is more likely meet the requirement of regulation 9(2)(c) than a British citizen who was employed in another Member state for a period of four months.

Principal residence

10. The principal residence is the place and country where the British citizen's life is primarily based.
11. For example, a British citizen worked in France for three months, staying in a hotel during the week and returning to their main home in the UK at the weekends. In this case they are unlikely to meet the requirements of regulation 9(2)(c) as their principal residence would be considered to be the UK.

Degree of integration

12. When considering the degree of integration in another EEA member state, relevant factors may include:
 - a. Does the British citizen have any children born in the host member state? If so, are the children attending schools in the host member state?
 - b. Does the British citizen have any other family members resident in the host member state?
 - c. Has the British citizen immersed themselves into the life and culture of the host member state? For example, have they bought property there? Do they speak the language? Are they involved with the local community?

The more of these factors that are present on a case, the more likely the British citizen is to be considered as having transferred the centre of their life.

13. For example, a British citizen is working in France, is fluent in French and has bought a house there. Their children were born in France and are educated in a French school where the British citizen sits on the school council. In this example it is likely that the British citizen has moved the centre of their life to France. Contrast with the example of a British citizen who will be working in France for three months, who resides in a hotel and returns to the UK every weekend. They don't speak the language and educate their children in a school in the UK. In this second example they are less likely to have moved the centre of their life to the UK.

14. It should be noted that the factors set out in regulation 9(3) are not determinative. The question as to whether the British citizen would be deterred from exercising their free movement rights were their spouse/civil partner refused, must be determined having regard to all relevant factors.

Appeal rights

15. Where any of the above factors are not satisfied, the application should be refused in line with regulation 9(2)(c).

16. All such refusals would attract an in-country right of appeal subject to the restrictions in regulation 26.

Contact

17. If you have any queries about this notice, please contact [*REDACTED – section 40(2)*] on [*REDACTED – section 40(2)*], or email the European Operational Policy Mailbox at EuropeanOperational@UKBA.gsi.gov.uk

[*REDACTED – section 40(2)*]
Head of European Operational Policy
01 January 2014

Annex A

Transitional Arrangements

1. The changes to regulation 9 come into effect on 01 January 2014. However, transitional provisions which allow applicants to apply on the previous scope of the regulation 9 will apply in certain circumstances.
2. The transitional provisions apply where the spouse/civil partner of the British citizen:
 - a) has a right to permanent residence in the UK on the 01 January 2014; or
 - b) has a right to reside in the UK on 01 January 2014 **and** either:
 - i. Holds a valid registration certificate or residence card or EEA family permit issued under the 2006 Regulations; or
 - ii. Has made an application under the 2006 Regulations for a registration certificate or residence card or EEA family permit which has not yet been determined; or
 - iii. Has made an application under the 2006 Regulations for a registration certificate or residence card which has been refused and in relation to which an appeal under regulation 26 could be brought whilst the appellant is in the UK (excluding out of time appeals) or an appeal is pending.
3. If the above criteria are met, these transitional arrangements apply until the occurrence of one of the following events:
 - a) the six month validity period to enter the UK in reliance on a family permit has expired and the family member has not entered the UK;
 - b) An appeal (excluding out of time appeals) can no longer be brought and no appeal has been brought;
 - c) Any appeal against the decision to refuse to issue residence documentation is dismissed, withdrawn or abandoned;
 - d) The person ceases to be the family member or family member who has retained the right of residence;
 - e) Any right of permanent residence is lost as a result of two more consecutive years absence from the UK.