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(FOI)Home Office Ref: 23660

Date: 9 August 2012

Dear Mr. Stevens,

Thank you for your e-mail of 30 July in which you ask for information regarding the United Kingdom's implementation of the judgment of the Court of Justice of the European Union ("ECJ") in the case of *Eind* (C291-05). Your request is being handled as a request for information under the Freedom of Information Act 2000.

You have asked whether the UK Border Agency is aware of the judgment in the case of *Eind* and what the UK Border Agency policy is in dealing with applications affected by the judgment.

As you are aware, the ECJ ruled in *Eind* that a non-EEA national family member of an EEA national who has worked in another EEA member state, and who resided with the EEA national in that state, has a right to reside in the Member State of which the worker is a national even where that worker does not carry on any effective and genuine economic activities on their return.

The *Eind* judgment expanded the scope of a previous judgment of the ECJ in the case of *Surinder Singh* (C370-90) which confirmed the rights of non-EEA family members of EEA nationals who had worked in another EEA member state to accompany their family member on their return to the EEA member state of their nationality. The *Surinder Singh* judgment has been incorporated into the Immigration (European Economic Area) Regulations 2006 ("the Regulations") by way of regulation 9.

The impact of the *Eind* judgment on UK nationals is that where the UK national has been exercising Treaty rights as a worker or self-employed person in another EEA member state, the right of family members who resided with them in that member state to accompany them to the UK under regulation 9 is not reliant on the UK national being economically active in the UK on their return.

The UK Border Agency acknowledges the judgment in *Eind* and as a result there is no requirement for UK nationals who seek to rely on the provisions of regulation 9 to sponsor their family members under the Regulations to provide evidence of employment or self-employment on their return to the UK.

The impact of the judgment has been communicated to UK Border Agency staff in an internal guidance notice, which is set out at Annex A of this response. Please note that this document has had some of the information held within it redacted as it falls to be exempted from release under Section 40(2) of the Act, as it refers to personal information. The exempted sections are marked as redacted.

We are currently in the process of modernising the existing staff guidance for European case work, and will ensure that the updated position is reflected when the modernised guidance is published.

You have requested information regarding the number of applications made on the basis of the *Eind* ruling since the judgment was handed down by the ECJ. Unfortunately, as applications for a document confirming a right of admission or residence under the Regulations by persons relying on regulation 9 are recorded in the same way as applications made by family members of EEA nationals, it is not possible to ascertain how many applications were made on this basis since the *Eind* judgment was handed down in December 2007.

You have asked why the UK Border Agency website does not highlight the impact of the *Eind* judgment on applications from family members of UK nationals under the Regulations. As a result of your enquiry we have reviewed the information on the UK Border Agency website and we agree that the information for family members of British citizens on the "European Nationals" section of the website is out of date and reflects the previous position following the judgment in *Surinder Singh*. Thank you for bringing this to our attention and please be advised that we will amend this section in due course.

You have also asked about why there is no provision in the EEA2 form for applications on the basis of the '*Eind*' judgment. Amendments were in fact made to the EEA2 and EEA4 form to better accommodate applications for documentation on the basis of regulation 9. These are referred to as "Surinder Singh" cases as this was the most relevant judgment for family members of UK nationals, however, the form does not preclude applications submitted on the basis of the *Eind* judgment where the EEA national is not economically active in the UK.

In keeping with the Freedom of Information Act, we assume that all information can be released to the public unless it is exempt. In line with normal practice we are therefore releasing the information which you requested via the Home Office website.

If you are dissatisfied with this response you may request an independent internal review of our handling of your request by submitting a complaint within two months to the address below, quoting reference FOI 23660. If you ask for an internal review, it would be helpful if you could say why you are dissatisfied with the response.

Information Access Team  
Home Office  
Ground Floor, Seacole Building  
2 Marsham Street  
London SW1P 4DF  
e-mail: [FOIRequests@homeoffice.gsi.gov.uk](mailto:FOIRequests@homeoffice.gsi.gov.uk)

As part of any internal review the Department's handling of your information request will be reassessed by staff who were not involved in providing you with this response. If you remain dissatisfied after this internal review, you would have a right of complaint to the Information Commissioner as established by section 50 of the Freedom of Information Act.

Yours sincerely

European Operational Policy Team  
UK Border Agency

**Annex A – European Operational Policy Notice 05-2011: “Instruction on Regulation 9 Surinder Singh cases” [Redacted]**

**From:** European Operational Policy Team

**Subject:** Regulation 9

**Date:** 19 May 2011

**Issue number:** 5/2011

1. This notice is to clarify the position relating to family members of British citizens who apply for documentation on the basis of regulation 9 of the Immigration (European Economic Area) Regulations 2006 (“the Regulations”) (i.e. Surinder Singh cases).
2. Currently, section 5.5 of Chapter 5 of the European Casework Instructions – Residence Card Applications – states that in support of an application which relies on regulation 9 the applicant must provide:
  - The valid British passport of the British citizen
  - The passport of the third country national
  - Marriage certificate/civil partnership certificate
  - Documentation confirming that the British citizen would be a qualified person if s/he were an EEA national
3. This guidance is incorrect and does not reflect the actual requirements of regulation 9 or associated case law.
4. Legal advice has clarified that the British sponsor in a Surinder Singh case does not need to prove that s/he continues to be a worker or self-employed person upon his/her return to the United Kingdom. The UK national is **only** required to show that s/he was a worker or self-sufficient person before returning to the United Kingdom. The UK national is not required to be a qualified person under the Regulations following his return to the UK.
5. This position was most recently confirmed in the case of Eind, where the Union citizen (who was Dutch) had worked in the UK but on his return to the Netherlands was neither working nor self-employed. The ECJ held that the fact that he was no longer carrying on any effective and genuine economic activities on his return to his home State was irrelevant.
6. The ECIs will be amended to reflect this accordingly.
7. Any policy enquiries on this Notice should be addressed to [REDACTED] or [REDACTED].

[REDACTED]

Head of European and Nationality Policy  
19 May 2010