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North West Region
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Wayne Pearsall
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(FOI)Home Office Ref: 26162

Date: 27 February 2013

Dear Mr Pearsall,

Thank you for your e-mail of 30 January in which you ask for information regarding the issue of EEA family permits to non-EEA family members of British citizens. Part of your request is being handled as a request for information under the Freedom of Information Act 2000, and part is being handled as a routine enquiry as it does not specifically request the release of information held by the UK Border Agency.

In your e-mail you have requested to be provided with the following information:

- Please also forward a copy of all documents relating to the processing of EEA family permits for a non-eea national where the EEA national is a british citizen.
- All guidance, memos, training materials ETC relating to issuing of an EEA family permit to a non-eea national would help immensely.

Guidance on considering applications for EEA family permits to family members of British citizens is contained in section EUN 2.14 of the Entry Clearance Guidance, which can be found on the UK Border Agency website at the following address:
<http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/ecg/eun/eun2/#header14>

Guidance on the rights of non-EEA family members of British citizens can also be found in the modernised guidance for EEA and Swiss nationals: free movement rights. The relevant pages are 35 and 38. You can find this guidance on the UK Border Agency website at the following address:
<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/modernised/07-eea-swiss-ec/eea/eea-swiss?view=Binary>

Section 21 of the Freedom of Information Act exempts the Home Office from having to provide you with this information, because it is already reasonably accessible. If

you have any difficulties in accessing this information at the source which I have indicated, please contact me again.

Your request for information covers all 'guidance, memos, training materials etc' relating to the issuing of EEA family permits to non-EEA nationals and copies of all documents relating to the processing of EEA family permits for a non-EEA national where the EEA national is a British citizen.

Under section 12 of the Act, the Home Office is not obliged to comply with an information request where to do so would exceed the cost limit.

We have estimated that the cost of meeting your request would exceed the cost limit of £600 specified in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004. We are therefore unable to comply with it. This is because your request covers a wide range of documents and does not specify a particular timeframe. Therefore, the European Operational Policy Team would need to search through all documents, guidance, memos and training materials relating to EEA family permits which have ever been issued by that team and by other teams within the UK Border Agency. It is considered that the work required to ensure that all of the information held by the UK Border Agency covered by your request was located, retrieved and extracted would by far exceed the £600 cost limit.

The £600 limit is based on work being carried out at a rate of £25 per hour, which equates to 24 hours of work per request. The cost of locating, retrieving and extracting information and preparing the response can be included in the costs for these purposes. The costs do not include considering whether any information is exempt from disclosure, overheads such as heating or lighting, or items such as photocopying or postage.

If you refine your request, so that it is more likely to fall under the cost limit, we will consider it again. For example, you could limit your request to a particular type of document, such as 'guidance issued to caseworkers', or limit to a specific period in which documents were issued. Please note that if you simply break your request down into a series of similar smaller requests, we might still decline to answer it if the total cost exceeds £600.

The remainder of the questions set out in your request do not fall within the scope of the Freedom of Information Act 2000 and therefore have been treated as routine enquiries. Our response to these routine enquiries is set out in Annex A of this letter.

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 26162. 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

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 of FOI Response 26162 – Response to routine enquiries.

If a British Citizen has exercised his rights as an EEA national and worked in another EEA member state, is it not true that he is then allowed to have his wife join him in the UK when he returns to the UK to live?

Where an EEA national has exercised free movement rights in another EEA member state as a worker or self-employed person, they have a right to be accompanied by their family members on their return to the member state of which they are a national where those family members resided with them in the host member state. This principle was established in the judgment of the Court of Justice of the European Union (ECJ) in the case of *Surinder Singh* and was expanded upon in the judgment in the case of *Eind*.

I do not believe that the EC ruling stated that the EEA national and non EEA wife must live together in another EEA state for this to be true.

In its judgment in the case of *Surinder Singh*, the ECJ found that European law requires a Member State to grant leave to enter and reside in its territory to the spouse, of whatever nationality, of a national of that State who has gone, with that spouse, to another Member State in order to work there as an employed person as and returns to establish himself or herself in the State of which he or she is a national.

It is clear that the judgment in this case refers to family members who have resided in the host Member State with the EEA national while they were a worker or self-employed person in that Member State.

Should my wife (non-EEA National) wish to travel to the Republic of Ireland with myself (British Citizen) she would require her passport to do this. Her passport is currently held with UKBA. To withhold her travel documents would hinder both the EEA national and non-EEA family members travel into another EEA member state - this is contrary to the EC directive 2004/38/EC. What is the process to secure the return of travel documents for such a non-EEA family member.

The process for securing the return of passports held by the UK Border Agency will depend on which department the document is currently held by, and on what grounds the document is being retained. If you wish to be advised on the relevant procedure, it would be helpful if you could provide further detail on the department which has retained the document and reason for the document being retained.

Also, should the British citizen who works in the Republic of Ireland then wish to travel back to the UK, would the non-EEA family member have entry clearance to return to the UK with the EEA/British citizen.

Persons with a right of admission to the UK by virtue of Regulation 9 of the Immigration (European Economic Area) Regulations 2006 (as amended) can make a free of charge application for an EEA family permit to facilitate their admission to the UK.

Family members of UK nationals who qualify for a right of admission under the Regulations can also demonstrate their right of admission at port under Regulation 11(4), however they would need to ensure that they have all relevant evidence to demonstrate their right of admission.

What evidence would be required to secure an EEA family permit for the non-EEA national on return to the UK.

A person applying for an EEA family permit as the family member of a UK national under Regulations 9 would need to provide evidence to demonstrate that they meet the conditions in the Regulations;

- Evidence of identity (for themselves and the British citizen)
- Evidence of relationship to the British citizen such as birth/marriage certificate
- Evidence that the British citizen has exercised free movement rights as a worker or self-employed person in another EEA member state
- Evidence that the applicant resided with the British citizen in that EEA member state while they were a worker or self-employed person.

You can find more information about how to apply for an EEA family permit on the UK Border Agency website here: <http://www.ukba.homeoffice.gov.uk/eucitizens/eea-family-permit/>