

Annex 4 to 32642 (Singh)

Subject: initial response to Mr Singh

Date: 13/01/14

Redaction information: Mr Singh's email address redacted in accordance with section 40(1) – subject's personal data.

Other information: response published at:

https://www.whatdotheyknow.com/request/surinder_singh_for_dual_british#incoming-469986

From: European Operational Policy Enquiries

Sent: 13 January 2014 15:40

To: <Redacted>

Cc: European Operational Policy Enquiries

Subject: Freedom of Information request - Surinder Singh for Dual British and Irish nationals

Dear Mr Singh,

Thank you for your email of 28 December to the Home Office Freedom of Information team regarding the Surinder Singh provisions under European Union law and how they apply to dual British/Irish citizens. Your query has been passed to the European Operational Policy Team for a response. We are treating your request as a general enquiry rather than as a request for specific information under the Freedom of Information Act 2000.

You have asked for "any guidance, legislation or otherwise which might outline a prevention of a dual Irish/British national from benefiting from the case of Surinder Singh via Ireland". I have interpreted this to mean whether a dual British/Irish citizen can rely on the judgment in Surinder Singh when moving to the UK after a period of residence in Ireland as a worker or self-employed person. Please let me know if this is incorrect.

The Home Office has not produced any guidance on this specific subject. However, in the case of Shirley McCarthy (case C-434/09), the Court of Justice of the European Union ruled that Directive 2004/38/EC ('the Free Movement Directive') is not applicable to a Union citizen who has never exercised his right of free movement, who has always resided in a Member State of which he is a national and who is also a national of another Member State.

You can view a summary of the McCarthy case at the link below:

<http://www.eulaws.eu/?p=323>

The ruling itself can be found at the following page:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62009CJ0434:EN:HTML>

The UK interprets this judgment to mean that a dual British/Irish citizen cannot rely on their Irish citizenship to exercise free movement rights in the UK (and so bring in family members under EU law). Similarly, the same person cannot rely on their British citizenship to exercise free movement rights in Ireland. In both situations, the person would be residing in a Member State of which they are a national and in which they enjoy an unconditional right to reside. Consequently, a dual British/Irish citizen moving from Ireland to the UK would not be able to be able to invoke the judgment in Surinder Singh in order to engage family reunification rights, because their residence in Ireland would not have been covered by the Free Movement Directive.

There is, of course, nothing to prevent a British/Irish citizen from exercising their free movement rights in a Member State of which they are not a national and relying on Surinder Singh on their return to the UK (or Ireland, as the case may be).

I hope this has clarified the Home Office's position.

Your sincerely,

European Operational Policy Team
Operational Policy & Rules Unit
Immigration & Border Policy Directorate
Home Office

Level 5 | Vulcan House (Steel) | 8 Millsands | Sheffield | S3 8NU

-----Original Message-----

From: Sukwant Singh [mailto:<redacted>]

Sent: 28 December 2013 11:02

To: FOI Requests

Subject: Freedom of Information request - Surinder Singh for Dual British and Irish nationals

Dear Home Office,

Could you provide me with any guidance, legislation or otherwise which might outline a prevention of a dual irish/british national from benefiting from the case of surinder singh via ireland.

Yours faithfully,

Sukwant Singh