



Home Office

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Mrs Amin

Sent By email –  
[request-199974-05c12849@whatdotheyknow.com](mailto:request-199974-05c12849@whatdotheyknow.com)

26 March 2014

Dear Mrs Amin,

### **FOI Request 30971**

Thank you for your email of 2 March in which you have asked for information concerning entry and residence in the UK under the judgment in the case of *Surinder Singh*. Specifically, you have asked for:

“...internal documentation and policy regarding Surinder Singh cases particularly dealing with an application for an EEA2 where the British citizen’s spouse has entered the UK without an EEA Family Permit.

The documents relevant to my query should address

1. The legality of the entry to the UK from Ireland of a spouse of a British citizen exercising treaty rights in an EEA COUNTRY (Surinder Singh) under Directive 2004/38 without a family permit and without an A1 Stamp.
2. Policy and documents on dealing with EEA2 applications from a spouse of a British citizen exercising treaty rights in an EEA COUNTRY (Surinder Singh) where the British citizen has not demonstrated that they transferred their "centre of life" to an EEA country including whether if any removal proceedings would be considered in this circumstance.”

Your request is being handled as a request for information under the Freedom of Information Act 2000 ('the Act'). I have considered each part of your request in turn.

- 1. Documents concerning the legality of entry to the UK from [the Republic of] Ireland by a spouse of a British citizen exercising Treaty rights in an EEA country under Directive 2004/38/EC without an EEA family permit or 'A1 stamp'**

The Home Office has not issued any guidance or policy documents specifically addressing the issue you have raised. However, the Home Office's published guidance on the common travel area (which comprises the UK, Republic of Ireland, Channel Islands and Isle of Man) can be found in Chapter 1, Section 2 of the Immigration Directorates' Instructions, available via the following link:

<https://www.gov.uk/government/publications/chapter-1-section-2-travel-applications>

Since this information is already in the public domain it is considered reasonably accessible to you and is therefore exempt from further disclosure under section 21 of the Act.

Where a non-EEA passenger seeking to enter the UK from the Republic of Ireland without an EEA family permit is examined by a Border Force officer, consideration would be given to whether they qualify for entry under the terms of Directive 2004/38/EC and the Immigration (European Economic Area) Regulations 2006 (as amended) ('the EEA Regulations'). It should be noted that under Article 5(4) of the Directive and regulation 11(4) of the EEA Regulations, entry cannot be refused solely on the grounds of not holding a visa or EEA family permit.

If the passenger is the family member of a British citizen, the officer would also consider whether the requirements of regulation 9 of the EEA Regulations (which gives effect to the Surinder Singh judgment) are met. The version of regulation 9 in force from 1 January 2014 can be found at the following link:

<http://www.legislation.gov.uk/ukxi/2013/3032/schedule/1/paragraph/5/made>.

Similarly, if the passenger subsequently applies for a residence card on application form EEA2, it would be considered in the normal way under the relevant Regulations.

**2. Policy and documents on dealing with EEA2 applications from a spouse of a British citizen exercising Treaty rights in an EEA country (Surinder Singh) where the British citizen has not demonstrated the transfer of the centre of their life, including whether removal action would be taken**

In answering this part of your request, I have taken the reference to 'EEA2 applications from a spouse of a British citizen exercising Treaty rights in an EEA country (Surinder Singh)' to be a reference to an application for a residence card under regulation 17 of the EEA Regulations, with reference to regulation 9 (Surinder Singh).

The Home Office holds some of the information you have requested. I have disclosed at **Annex A** to this response guidance issued by the European operational policy team to caseworkers considering Surinder Singh applications under the Regulations in force since 1 January 2014 ('European operational policy notice 02/2014'). You should also note the transitional provisions outlined in that notice.

In disclosing this notice, I have redacted the names and telephone numbers of staff members mentioned in the notice, as this is personal data and is exempt from disclosure under section 40(2) of the Act. Otherwise, the notice has been disclosed in full.

The Home Office has not issued any specific guidance on enforcement action taken against applicants who fail to meet the Surinder Singh 'centre of life' criteria. However, I can confirm that if a non-EEA national applies for a residence card as the family member of a British citizen under the judgment in the case of Surinder Singh, and they cannot demonstrate that the British citizen transferred the centre of their life to the other EEA state, and they are not covered by the transitional provisions, their application would be refused. If they do not otherwise have a right to reside, or leave to enter or remain in the UK, the person would be liable for administrative removal from the UK under regulation 19(3)(a) of the EEA Regulations.

You can find general guidance on the administrative removal of EEA nationals in Chapter 50 (EEA) of the Enforcement Instructions and Guidance, which can be accessed via the following link:

<https://www.gov.uk/government/publications/chapters-46-to-62-detention-and-removals>

I hope this response meets your needs. 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 30971**. 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  
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London SW1P 4DF  
e-mail: [info.access@homeoffice.gsi.gov.uk](mailto:info.access@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

P Grant  
European Operational Policy Team