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Summary of the OPI

Amendments have been made to [regulation 9 of the Immigration \(European Economic Area\) Regulations 2006 \(as amended by the Immigration \(EEA\) Regulations 2016\)](#) which comes into force on 25th November 2016. These changes are two-fold:

- a. to implement the Court of Justice of the European Union judgment in the case of O and B C-456/12 by expanding the capacity in which a British citizen can exercise free movement rights in another EEA state; and
- b. to tighten the provisions in regulation 9 to ensure British citizens and their family members undertake genuine residence in another EEA state and are not seeking to use regulation 9 to circumvent the Immigration Rules.

Guidance for Entry Clearance Officers on these changes has been incorporated into the EEA family permit guidance which will replace the ECGs on GOV.UK.

Main text of the OPI

The key changes to regulation 9 are as follows:

- The relevant British citizen exercised free movement rights as a worker, self-employed person, self-sufficient person or student or that they had permanent residence in the EEA state immediately before their return to the UK;
- The relevant British citizen must show that they would be a qualified person on their return to the UK;
- The British citizen's and their family member's residence in the EEA state must be genuine. Factors relevant to whether such residence was genuine are set out in regulation 9(3); and
- Regulation 9 does not apply where the purpose of the residence in the EEA State was as a means for circumventing any immigration laws applying to non-EEA nationals to which the family member would otherwise be subject (for example any requirement to have leave as the spouse of a British citizen under the Immigration Rules).

Guidance on assessing applications under regulation 9 can be found in the newly published [EEA family permit guidance](#) and in the [Free Movement Rights: Family Members of British citizens](#).

Contact for this OPI: <redacted>

Issued on: 21 November 2016

Addendum to OPI 679, issued on 25 November 2016

Further to OPI 679, attached please find suggested refusal wordings for 'Surinder Singh' EEA Family

Permit applications, supplied by the Freedom of Movement policy team. We are circulating these now since the regulation changes are effective from today but please note that discussions are ongoing with FoM policy.

Refusal wording Option 1 is problematical in that it states:

...you were served with a letter inviting you to submit additional information and evidence to demonstrate that you meet the conditions of regulation 9 (as amended). It is noted that you **replied / did not reply** to this letter.

The letter template has not been agreed and it may be possible to ask for the additional information over the phone.

For the time being, if it looks as if Option 1 would apply to a case you are assessing, please send brief details of the application to <redacted>. and we shall refer to the FoM policy team for instructions on how to proceed.

2nd Addendum to OPI 679, issued on 06 December 2016

Further to the message [above], the refusal wording in Option 1 has been amended. If you need to contact an applicant to ask for additional information, you may do so in writing or by telephone. The interim letter attached gives a list of suggested questions. If you opt for a telephone interview, please use the standard interview template on Proviso to record the questions and answers, for audit purposes.

Please refer any queries about this message to the Freedom of Movement Policy Team – <redacted>

Attachments

- <redacted>
- <redacted>

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