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Mr. Wayne Pearsall

Via e-mail to:- request-147584-e721e04f@whatdotheyknow.com

15 July 2013

Dear Mr. Pearsall,

Freedom of Information request (our ref: 26953): internal review

Thank you for your e-mail of 25 April 2013, in which you asked for an internal review of our response to your Freedom of Information (FoI) request about qualifications for Indefinite Leave to Remain (ILR).

I have now completed the review. I have examined all the relevant papers, and have consulted the policy unit which provided the original response. I have considered whether the correct procedures were followed and assessed the reasons why information was withheld from you. I confirm that I was not involved in the initial handling of your request.

My findings are set out in the attached report. My conclusion is that the Home Office should have treated this as a repeat request under Section 14(2) of the Freedom of Information Act.

This completes the internal review process by the Home Office. If you remain dissatisfied with the response to your FoI request, you have the right of complaint to the Information Commissioner at the following address:

The Information Commissioner
Wycliffe House
Water Lane
Wilmslow
Cheshire SK9 5AF

Yours sincerely

Andy Woodgate
Information Access Team

Internal review of response to request under the Freedom of Information (FoI) Act 2000 by Mr Pearsall (reference 26953)

Responding Unit: Information Management Services (IMS)

Chronology

Original FoI request: 30 March 2013

IMS response: 25 April 2013

Request for internal review: 25 April 2013

Subject of request

1. On 30 March 2013 Mr. Pearsall submitted the following request to the Home Office:

*I request information (Under the FOI Act 2000) As to all guidance, all notes, any material infact WHICH UKBA have as to how a person who has A Derivative Right of Residence due to being ***A PARENT OF** a British Child.... can gain Indefinate leave to remain.*

This should of been easily clear from the content of previous mails... but just to clarify, and to ensure that the request is treated as it is supposed to be.

The response by the Home Office

2. On 25 April 2013 the Home Office replied to the request, stating that guidance relating to a person's Derivative right under Zambrano had been provided in a previous response (Home Office reference 26630) and that further information had been provided (under Home Office reference 26814) regarding a person's Indefinite Leave to Remain (ILR) or Permanent Residency under Zambrano.
3. In the FOI request, Mr Pearsall also asked for '*any material*' for a person, who has a Derivative Right of Residence, and how they can gain ILR. The Home Office interpreted this as a new request for information on the changes of policy in this area. The Home Office stated that this subject is currently under consideration and that any disclosure of this material would fall under the exemption at section 35(1)(a) (formulation or development of government policy).

The request for an internal review

4. On 25 April 2013 Mr Pearsall requested an internal review, in which he acknowledged that some of the information requested had already been provided. Mr. Pearsall then requested a review into the whole of the request. The full text of the internal review request can be found at **Annex A**.

Procedural issues

5. The Home Office received Mr Pearsall's request via email on 30 March 2013. On 25 April the Home Office provided Mr Pearsall with a substantive response, which represents 19 working days after the initial request. The Home Office complied with section 10(1) by providing a response within the statutory deadline of 20 working days. The response also informed Mr. Pearsall of his right of complaint to the Information Commissioner, as set out in section 17(7)(b) of the Act.

Consideration of the response

6. The response of 25 April was that the request had in effect already been answered, as described in paragraph 2 of this report. The full text of the Home Office response can be found at **Annex B**.

7. Section 14(2) of the Freedom of Information Act states:

Where a public authority has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request.

8. As the information had already been provided to and acknowledged by Mr Pearsall, the request can be considered a repeat request and the Home Office were not obliged to provide the information under section 14(2) of the FOI Act.
9. The final part of the request was for any material regarding derivative rights and ILR. Mr Pearsall's request of 14 March, handled under reference 26814, asked for the following:

All information available in relation to "Zambrano" Derivative Residence of a non eea national mother/father and their ability to gain ILR / PR via the route of Zambrano.

10. The wording of the current request (i.e. that handled under reference 26953) is slightly different from that of 26814 as it does not refer to the Zambrano case law. This part of the request can be seen as for any information for any derivative right to reside.

11. There are other derivative rights to reside, but Mr Pearsall's request specifically referred to '*a derivative right of residence due to being the parent of a British citizen child*'. Each derivative right is slightly different, but there is only one derivative right to reside based on being a parent of a British Citizen Child, which derives from the Zambrano ruling. This is clearly a request for the same information in 26814.
12. The Home Office response to request 26814 did not take into account the policy information held. Mr. Pearsall did submit an internal review of this response, stating that he had asked for all information held by the UKBA on this subject. The internal review of this response has been completed and has taken into account the policy documents referred to by Mr Pearsall. The final part of the request under consideration should therefore also be viewed as a repeat request under section 14(2).

Conclusion

13. The response was sent within 20 working days and the Home Office complied with section 10(1) of the FOI Act. Section 1(1)(a) was complied with, as the response clearly stated that the requested information was held.
14. The response complied with the requirements in section 17(7)(a) and 17(7)(b) as it provided details of the complaints procedure.
15. The response should have been to treat the request as a repeated request under section 14(2).

Andy Woodgate
Information Access Team
Home Office
14 June 2013

Annex A – full text of Mr. Pearsall's Internal Review

Dear UK Border Agency,

Please pass this on to the person who conducts Freedom of Information reviews.

I am writing to request an internal review of UK Border Agency's handling of my FOI request 'temporary admission to ILR'.

I am not happy with the response I have received. Whilst I accept that you do not need to provide documentation which you have previously supplied to me, I thank you for providing the references to said documents/request...

However, it is clear that this reply is misleading and does not provide the answer to the question asked.

I note the following: The rules says:

Definition of continuous lawful residence

Lawful residence is defined in paragraph 276A of the Immigration Rules as a period of continuous residence in which the applicant had one of the following:

- (i) existing leave to enter or remain; or
- (ii) temporary admission within section 11 of the 1971 Act where leave to enter or remain is subsequently granted; or
- (iii) an exemption from immigration control, including where an exemption ceases to apply if it is immediately followed by a grant of leave to enter or remain.

You have confirmed that a person that is subject to a Derivative Right of Residence does not require entry clearance to enter the UK. They are therefore a person who has an "exemption from immigration control". -> FOI 26968

I therefore find it rather amazing that UKBA state that policy is against the public interest in this manner. Wouldn't one consider that it is within public interest to allow people to enforce the laws that they are subject to. To allow families the most basic human right to a family life.

I therefore request a reconsideration of the request on a whole, as clearly false information was provided. Considering that TA can in fact count towards the ILR of a person... - as noted above. Despite your response stating otherwise.

I also request reconsideration of the choice to withhold

information. I do not feel that this is within the public interest to withhold. I will therefore file an official complaint in relation to such if information remains withheld.

A full history of my FOI request and all correspondence is available on the Internet at this address:

<http://www.whatdotheyknow.com/request/te...>

Annex B – Home Office response ref 26953

Guidance relating to a person with a Derivative right under Zambrano was provided to you as part of FOI 26630. Our subsequent response to FOI request 26814 provided further information to you regarding whether a person could acquire ILR/PR under Zambrano. This information has therefore, not been provided to you again as part of this FOI request.

Unlike these previous requests, your request above for information which includes "guidance, notes and any material" has been considered to include all emails by the Home Office on acquiring ILR for a person with a derivative right of residence. I can confirm that this subject is currently under development, and that this information would be captured by your request. I have decided, however, not to communicate this information to you pursuant to the exemption under section 35 (1)(a) of the Freedom of Information Act 2000. This allows us to exempt information if it relates to the formulation or development of Government policy.

The use of this exemption requires us to consider whether in all the circumstances of the case the public interest in maintaining the exemption stated above outweighs the public interest in disclosing the information. There is a public interest in releasing the information concerned as the issue of migration and its impact on the UK is of clear public significance and transparency in this matter would enhance knowledge of the way policy is developed. There is also a public interest in being able to assess the quality of advice being used by Home Office Ministers and their officials, and any subsequent decision making which arises from that advice.

We have also considered the public interest there may be in maintaining the exemption to the duty to communicate. There is a clear public interest in withholding the information concerned as both Ministers and officials need to be able to conduct rigorous and candid risk assessments of the impacts of migration on UK society and have the space to consider the reasons for and against developing policies. Both Ministers and officials also need room to develop policy in this sensitive area of public concern, without the fear that proposals will be held up to ridicule while initial policy is being formulated in this area. Disclosure of the information concerned would, furthermore, not be in the public interest as it would harm the policy-making process for Home Office officials in future when developing policies in this area. This is because disclosure could lead to officials in the future not challenging ideas when formulating, and this could lead in the longer term to poorer decision making.

We have considered whether in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the information. We have concluded that the balance of the public interests identified lies in favour of maintaining the exemption as there is a greater overall public interest in ensure that both Ministers and Home Office officials have the necessary space to develop and assess policy in this area to ensure that policies are as robust and effective as possible.

You have also asked for "the same as to a person who is currently on temporary admission within the UK".

Our response to FOI request 26814 confirmed that a person who has not held valid leave to enter or remain on the basis of family life as a parent of a child in the UK for the required period will not qualify for a grant of indefinite leave to remain on this basis. A person on temporary admission will not be considered to have valid leave to enter or remain in the UK.

There is, therefore, no specific guidance or information relating to a person with temporary admission acquiring ILR in the UK. I have, however, provided you with links to the general guidance on obtaining ILR through the parent or partner route:

Guidance on the parent route can be found at the following link:

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/modernised/family/family-parent?view=Binary>

The Immigration Rules relating to the parent route can be found:

<http://www.ukba.homeoffice.gov.uk/policyandlaw/immigrationlaw/immigrationrules/app-family-members/family-life-as-a-parent/>

Guidance on the partner route can be found at the following link:

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/IDIs/chp8-annex/partners.pdf?view=Binary>

The Immigration Rules relating to the partner route can be found at the following link:

<http://www.ukba.homeoffice.gov.uk/policyandlaw/immigrationlaw/immigrationrules/app-family-members/family-life-as-a-partner/>

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