



Home Office

Immigration (European Economic Area) Regulations 2016: 'Surinder Singh'

Aims and objectives

Aims and objectives: attendees will:

- understand the changes to regulation 9 in the EEA Regulations 2016
- be able to decide applications for EEA family permits / residence cards made by non-EEA national family members of British citizens who have exercised free movement rights
- know who to contact for any queries



Introduction – EEA Regulations 2016

- On Thursday 3 November, the Immigration (European Economic Area) Regulations 2016 were laid before Parliament
- The changes to regulation 9 – family members of British citizens – will come into force first, on Friday 25 November
- Further changes, mainly relating to criminality and abuse, will come into force on 1 February 2017

Transitional arrangements

- All decisions made on or after 25 November must apply new regulation 9
- You will need to write to the applicant for further information before making a decision in cases where the application is made on the old version of the form
- A standard letter for this will be provided

Regulation 9 – what you will consider (overview)

- The applicant must be a ‘direct’ family member of a British citizen who has exercised free movement rights
- The applicant and British citizen’s residence in the EEA host country must be genuine
- The purpose of the residence in the EEA host country must not be in order to circumvent the Immigration Rules

Stage 1(a) – is the British citizen sponsor a qualifying person?

- Stage 1(a) applies to residence card applications but not family permit applications
- To sponsor a family member's right to reside in the UK, the British citizen must be able to satisfy the conditions for being a qualified person in the UK – jobseeker, worker, self-employed person, self-sufficient person, student
- There are some exceptions to the ordinary conditions of being a qualified person because the sponsor is a British citizen instead of an EEA national

Stage 1(a) – British citizen sponsor (continued)

- **Jobseekers**
 - only have to show they are seeking employment and they have a genuine chance of being engaged
- **Comprehensive sickness insurance**
 - family members only, not the British citizen
- **Retained workers**
 - must have registered as a jobseeker with the relevant employment office and provide evidence of seeking employment and having a genuine chance of being engaged
 - but if employed for less than a year before becoming unemployed, they can only retain worker status for a maximum of six months

Stage 1(b) – relationship between applicant and sponsor

- Stage 1(b) applies to family permit applications and residence card applications
- The applicant must be a ‘direct’ family member of the British citizen, which means:
 - spouse or civil partner
 - direct descendant under 21 or dependent
 - dependent direct relative in the ascending line

Stage 2 – British citizen qualified person in the EEA host country

- The British citizen must have exercised free movement rights in the EEA host country
- Under new regulation 9, this can be as a worker, self-employed person, self-sufficient person or student, but not a jobseeker
- Or the British citizen can have acquired a right of permanent residence in the EEA host country

Stage 3 – genuine residence (introduction)

- You will still consider the ‘centre of life’ test, but it now forms part of a more wide-ranging ‘genuine residence’ test so you can consider more evidence
- There are four main factors relevant to whether the residence is or was genuine, though this is not an exhaustive list of relevant factors

Stage 3 – genuine residence (relevant factors – overview)

1. Whether the centre of the British citizen's life transferred to the EEA host country
2. The length of the applicant and British citizen's joint residence in the EEA host country

Stage 3 – genuine residence (relevant factors – overview)

3. The nature and quality of the applicant and British citizen's accommodation in the EEA host country, and whether it is or was the British citizen's principal residence
4. The degree of the applicant and the British citizen's integration in the EEA host country

Stage 3 – genuine residence (centre of life)

- Centre of life – you consider this already
- Relevant factors include:
 - the period of residence in the EEA host country as a qualified person
 - the location of the British citizen's principal residence
 - the degree of integration of the British citizen in the EEA host country

Stage 3 – genuine residence (length of joint residence)

- Length of joint residence
- ‘Joint residence’ means the time the applicant and British citizen lived together in the EEA host country while the British citizen was working, self-employed, self-sufficient or studying

Stage 3 – genuine residence (joint residence continued)

- The longer the period of joint residence, the more likely it is the residence will be genuine
- If the period of joint residence is short, you would expect to see a reason why the family unit is returning, or has returned, to the UK

Stage 3 – genuine residence (principal residence)

- Principal residence – you consider this already
- Nature and quality of accommodation in the EEA host country – e.g. a mortgaged home or long-term rented accommodation is more likely to indicate genuine residence than living at a hotel or a bed and breakfast, or short stays with friends
- The principal residence is the place and country where the British citizen's life is primarily based

Stage 3 – genuine residence (degree of integration)

- Degree of integration – you consider this already
- The more factors present that indicate integration, the more likely the residence is to be genuine
- You are looking at both the British citizen's integration **and** the applicant's integration

Stage 3 – genuine residence (integration – relevant factors)

- Factors relevant to degree of integration include:
 - have they immersed themselves into the life and culture of the EEA host country, e.g.:
 - have they bought property there?
 - do they speak the language?
 - are they involved with the local community?
 - do they own a vehicle that is taxed and insured there?
 - have they registered with the local health service, GP, dentist?



Stage 3 – genuine residence (integration – relevant factors)

- Relevant factors continued:
 - whether any children in the family live and attend school in the EEA host country
 - whether any adult family members are working, studying or otherwise involved in the local community

Stage 3 – genuine residence (conclusion)

- You must conduct a rounded assessment of all relevant information in order to decide whether the residence was genuine

Stage 4 – the purpose of residence (overview)

- There is a new test to consider the purpose of the British citizen and applicant's residence in the EEA host country
- Non-EEA family members normally need to meet the requirements of the Immigration Rules
- If joint residence in EEA host country was for the purpose of avoiding the Immigration Rules, the application will be considered abusive and refused

Stage 4 – the purpose of residence (relevant factors)

- The family member's immigration history – including previous applications for leave to enter or remain in the UK and whether they previously resided lawfully in the UK with the British citizen
- If the family has never made such an application, the reason the family member did not to apply to join the British citizen in the UK before the British citizen moved to the EEA host country

Stage 4 – the purpose of residence (relevant factors continued)

- The timing and reason for the British citizen moving to the EEA host country
- The timing and reason for the family member moving to the EEA host country
- The timing and reason for the family unit returning to the UK

Stage 4 – the purpose of residence (continued)

- None of these factors is determinative on its own
- You must not refuse an application under the ‘purpose’ test solely on the basis that the family member has previously:
 - had an application refused
 - overstayed, or
 - been removed from the UK

Stage 4 – the purpose of residence (continued)

- You must consider the family member's immigration history together with all other relevant factors (particularly the 'genuine residence' factors) to determine whether the family member qualifies for a family permit or residence card

Stage 5 – additional information

- You might have reasonable doubt about whether the residence in the EEA host country was genuine, or about the motives behind the residence
- If you think you need additional information in order to decide the application, then you can:
 - write to the applicant asking them to provide further information, or
 - request that they attend a credibility interview

Stage 5 – additional information (continued)

- Credibility interviews should be considered only if:
 - any additional information required cannot be obtained by writing to the applicant, or
 - having received the applicant's response to a written request for additional information, you still do not have enough information to decide the application
- All requests for a credibility interview must be approved by a senior caseworker

Stage 5 – additional information (continued)

- If the applicant fails to:
 - provide the additional information requested
 - attend an interview on at least two occasions, if so invited
- You must consider this together with the grounds which prompted the request for additional information when deciding the application
- The standard of proof is the balance of probabilities (civil standard)

Stage 6 – deciding the application

- Issue a residence card or refuse to issue a residence card
- If refused, there is a (non-suspensive) right of appeal subject to the usual conditions – evidence of identity and related as claimed
- Removal (if applicable) will be under the Immigration and Asylum Act 1999, not the EEA Regulations, and subject to a 10 year re-entry ban under the Immigration Rules

IT changes

- **Family permits:** in the new year there will be a new button on Proviso to signify 'Surinder Singh' cases
- **Residence cards:** there are new CID stats categories
 - Residence Card – Issue family member of British citizen
 - Residence Card – Refuse family member of British citizen
 - Permanent Residence Card – Issue family member of British citizen
 - Permanent Residence Card – Refuse family member of British citizen
- **Please fill them in!** It will enable us to count 'Surinder Singh' decisions which will help us evaluate the policy change

Any questions?



Further information

- You will be provided with:
 - Updated guidance
 - Updated templates
 - Contact centre lines to take
- Contact details
- [REDACTED]
- [REDACTED]
- [REDACTED]
- Please complete the feedback form!