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EU Free Movement: 'Surinder Singh' cases

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Ever since a judgment of the Court of Justice of the European Union (then called the 'European Court of Justice') in 1992 known as the *Surinder Singh* case¹, nationals of countries in the European Economic Area (EEA)² and their non-EEA family members have been able to rely on European free movement rules when returning from another European State to their home country. If the EEA national has been "exercising EU Treaty rights" in the other country (for example by working or studying) then they will gain the right to bring their family members back to their home State with them, and will not have to meet requirements of domestic immigration laws.

This information sheet discusses recent judgments from the Court of Justice of the European Union which have clarified the scope of the *Surinder Singh* route to family reunion and may have an impact on the UK's domestic rules in this regard.

Impact of the income threshold rules

In July 2012 the government introduced tighter restrictions for British nationals wishing to bring non-European family members to join them in the UK. For example, a minimum income threshold of £18,600 was set for a person wishing to bring in their spouse. Further details of these rules were set out in our Information Sheet on the changes: [Family Migration – Changes to the Rules 2](#).

The income thresholds are currently under challenge in the Courts in a case called *MM*; the case was heard by the Court of Appeal in early March, and the judgment³ is awaited. In the meantime, the processing of family applications has been frozen by the government in all cases where the application falls to be refused on grounds of the income threshold. This affects thousands of people, who may have to wait several months for the judgment, and longer if there is a subsequent appeal to the Supreme Court, as is a realistic possibility

¹ [\[1992\] EUECJ C-370/90](#) (7 July 1992)

² The European Economic area includes all 27 European Union members states, plus Norway, Iceland and Liechtenstein. Switzerland, although not a member of the EEA, has reciprocal agreements with the EU that mean its citizens have similar free movement rights.

³ On appeal from *R(MM) v The Secretary of State for the Home Department* [\[2013\] EWHC 1900 \(Admin\)](#)

whatever the outcome in the Court of Appeal. The result of the new rules has been that the *Surinder Singh* route has taken on heightened significance.

The EEA Regulation changes in January 2014

Changes to the European Economic Area regulations were brought into force in the UK on 1 January 2014 (see ILPA's Information Sheet: [New European Free Movement Regulations](#)). These rules sought in part to curtail the scope of *Surinder Singh*, by requiring that British national has transferred the 'centre of his / her life' to another EU Member State, before s/he acquires the right to bring family members back to the UK on return from that State under EU free movement laws.

Is there a problem with 'abuse'?

The Explanatory Memorandum to the Statutory Instrument introducing the new EEA Regulations⁴ states that one of the reasons for the change is "*preventing abuse by those British citizens who move temporarily to another member State in order to circumvent the requirements of the usual immigration rules for their family members upon return to the UK*". However a Home Office study in 2012 found no evidence of such 'abuse' in the UK⁵, noting that there were only c. 350 '*Surinder Singh*' applications in each of the preceding years 2010 and 2011.

Recent developments in the Court of Justice of the European Union

Two recent Court of Justice cases, *O & B v Minister voor Immigratie, Integratie en Asiel C-456/12*⁶, a reference from Holland, have recently clarified the scope of the *Surinder Singh* judgment. The Court held that all EU citizens who reside in other member states exercising their rights under European law are entitled to have their family members join them in their home State on return. This is a widening of the scope of *Surinder Singh*, previously thought to apply to workers and the self-employed only. A period of residence for just over three months is required for the rules to apply, and the person's family life with the non-EEA national must be created or strengthened during that period. However the Court cautioned that these rules cannot be abused, defined by the Court as an intention artificially to create a situation to take advantage of EU rules.

The UK's EEA Regulations (as recently amended) are arguably stricter than what is required by European law. The requirement in the Regulations that a person must have moved the 'centre of his/her life' to the other European State would appear to set the bar too high – the position as interpreted by the Court of Justice is that if an EEA national has spent three months or more residing in another EEA state in line with their EU law rights to do so then they have the right to bring family members back to their home State on return. There is no requirement that the 'centre of their life' has shifted. There is thus the possibility that the Regulations would not withstand a challenge on the basis of EU law.

⁴ Immigration (European Economic Area) (Amendment) (No.2) Regulations 2013 (SI 2013/3032)

⁵ European Migration Network [Focussed Study](#) 2012

⁶ [Judgment](#) of 12 March 2014.