

# EU Settlement Scheme: Cases at the Margins

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## What will this talk cover?

- Surinder Singh cases
- Derivative rights to reside
  - Zambrano
  - Chen
  - Ibrahim and Teixeira
- “Lounes” cases

## Minister's statement 7 March 2019

“ ... The Government therefore intends to go ahead, as planned, with the full opening of the EU Settlement Scheme from 30 March 2019. The Immigration Rules for the scheme contained in the new Appendix EU include the following changes to the scope of the scheme ...

The scheme will be open to the family members of British citizens who were exercising their free movement rights under EU law before returning to the UK ('Surinder Singh' cases), and to the family members of certain dual British/EU citizens ('Lounes' cases);

The scheme will be open to others lawfully resident in the UK by virtue of a 'derivative right' to reside, based on wider EU law. These are 'Chen carers' (the primary carer of a self-sufficient EEA citizen child), 'Ibrahim and Teixeira' cases (a child of a former EEA citizen worker who is in education in the UK and their primary carer), and 'Zambrano carers' (the primary carer of a British citizen child or dependent adult) ... “

## Quick recap (1)

- EEA citizens and their “family members” living in the UK can apply for ILR (settled status) or limited leave (pre-settled status) through online application process
- Process therefore relatively straightforward for non-EEA citizens who qualify as “family members”
- Other routes are available, but more complex

## Quick recap (2): Family members of EEA citizens – who qualifies? See Annex 1 to Appendix EU

- Spouse (direct)
- Civil partner (direct)
- Child, grand-child or great grand-child under 21 of the EEA citizen or of the spouse or civil partner (direct)
- Dependent child, grand-child or great grand-child over 21 of the EEA citizen or of the spouse of civil partner (direct)
- Dependent parent, grandparent or great grand-parent of the EEA citizen or of the spouse or civil partner (direct)
- Durable partner (extended)
- Dependent relative of the EEA citizen, or member of their household or in strict need of EEA citizen's personal care on serious health grounds (extended)
- Dependent relative etc of the spouse or civil partner, provided that relevant document granted on basis of application made before 1 February 2017 (extended)

## Therefore ...

- Both “direct family members” and “extended family members” qualify
- **BUT** for EFMs, a “relevant document” needs to be provided as part of the application
- This is a family permit, registration certificate, residence card, document certifying permanent residence or permanent residence card issued by the UK under the current EEA Regulations (or by the Islands) and which:
  - Was not revoked, or fell to be revoked
  - Has not expired or otherwise ceased to be effective
  - Remained valid for the period of residence relied upon
- Therefore, need to apply for a relevant document first!

## Surinder Singh cases (1)

- Recap: where British citizen B moves to another Member State and then returns to the UK with their family member F, who has lived with B in that Member State. Confirmed in CJEU's decision in Case C-89/17 *Banger v SSHD* [2019] 1 WLR 845 that right extends to extended family members, but only same "facilitation obligation" as would usually apply.
- Key rules in reg. 9 of EEA Regulations. Note in particular:
  - Reg. 9(2)(a): BC resided as worker, self-employed, self-sufficient or student in host State
  - Reg. 9(2)(b): F and BC resided together there
  - Reg. 9(2)(c): F and BC's residence "genuine"
  - Reg. 9(4): Purpose of residence was not to circumvent immigration laws
- Home Office case-worker guidance v.4 published 29 March 2019

## Surinder Singh (2)

- Family member of a “qualifying British citizen” is eligible to apply under settlement scheme:
  - “Qualifying British citizen” and “family member of a qualifying British citizen” defined in Annex 1
  - See EU12 to 13 (ILR) and EU 14, condition 2 (limited leave)
- Only treated as “qualifying British citizen” and “family member of a qualifying British citizen” if satisfy reg. 9(2) and (4)(a) immediately before returning
- Contrary to gov.uk guidance, can qualify as durable partner or dependent relative of qualifying British citizen

## Surinder Singh (3)

- Rules are complex
- **For ILR**, can meet one of 4 conditions. Very broadly:
  - Condition 1: applicant has right of PR
  - Condition 2: applicant has ILR
  - Condition 3: continuous qualifying period of 5 years. Applicant can count residence in other categories, before became family member of a qualifying British citizen: EU 13, first para.
  - Condition 4: children under 21 of spouse or civil partner of British citizen

## Surinder Singh (4)

- **Limited leave** – can meet one of 2 conditions A or B
- Online service does not apply: call the EU Settlement Resolution Centre and will be sent a paper application form
- Home Office website says: *“you’ll be asked a few questions over the phone before you’re sent the application form.”*



## Lounes cases – dual British and EEA citizens

- CJEU’s judgment in Case C-165/16 *Lounes v SSHD* [2018] QB 1060: British citizen who also holds citizenship of another EEA State
- No discrete rule: simply that British citizens are excluded from definition of “EEA citizen” unless a “relevant naturalised British citizen”
- “Relevant naturalised British citizen” defined in Annex 1
  - Comes within reg. 2(1) of the EEA Regulations, as amended
  - Meets the criteria in reg. 9A(2) or (3)
- EU Resolution Centre process applies

## Derivative rights of residence (1) – a quick recap

- **Zambrano carer:** where primary carer of British citizen B in UK and B would be compelled to leave the EU if applicant were compelled to leave: reg. 16(5)
  - Pending judgment in Supreme Court: Shah and Patel, heard May 2019
- **Chen carer:** primary carer of EEA self-sufficient child: reg. 16(2)
- **Ibrahim and Teixeira:** child in education and their primary carer, where one of parents is / was a worker: reg. 16(3) and (4)
- Also includes children of the above, in certain circumstances: reg. 16(6)
- New case-worker guidance published on 2 May 2019: note new guidance on Zambrano applicants and “alternative means to remain in the UK”

## Derivative rights of residence (2)

### ILR: see EU 11, condition 3

- Applicant is a “person with a derivative right to reside” or a “person with Zambrano right to reside”
- Broadly, defined as person who meets requirements in reg. 16 of the EEA Regulations BUT
  - Chen carer: child does not need comprehensive sickness insurance
  - Do not qualify as Zambrano carer if have leave under another part of Immigration Rules
- Completed continuous period of 5 years: see EU 13, second para

## Derivative rights of residence (3)

- **Limited leave: see EU 14, condition 1**
- Zambrano carers have only been able to apply from 1 May 2019
- EU Resolution Centre process applies

**Thank you for listening**

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