

By email:

The Rt Hon Shabana Mahmood MP, Secretary of State for the Home Department
Mike Tapp MP, Parliamentary Under-Secretary of State (Minister for Migration and Citizenship)

15 October 2025

Dear Home Secretary and Minister for Immigration and Citizenship,

Late applications to the EUSS for long-standing UK residents who originally came to the UK under the Surinder Singh route

We are writing to ask for a change to the Appendix EU rules, to ensure the fair treatment of non-EEA family members of British citizens who made the UK their home many years ago and followed UK Home Office rules at the time of doing so.

These are non-EEA citizens who originally came to the UK under the Surinder Singh route. They may have obtained EEA residence documents, but they were not obliged to do so unless they were extended family members.¹

Background to the Surinder Singh route and its exclusion from the Withdrawal Agreement

When the UK was part of the EU, it was possible for UK citizens who had exercised their EU Free Movement rights to live in another EU Member State, to return to the UK and be joined by non-EU family members with whom they had lived in that EU Member State. These non-EU family members did not need to apply for a domestic UK immigration status, as they could derive their rights from their British family member, under the so-called 'Surinder Singh' route.

They would be able to apply for an EEA residence document, and after five years, for an EEA Permanent Residence ('EEA PR') document. Others may not have applied for an EEA residence document because they did not need to do so, since the right was declaratory, and the documentation was not mandatory for anyone other than extended family members from outside the EEA or Switzerland.

When the Withdrawal Agreement was negotiated, the Surinder Singh right was excluded from its scope because the UK wanted to end this route for returning British citizens. (It is worth noting here that the ending of this right is not reciprocal: by contrast, EU citizens living in the UK retain the ability to move back to their country of origin and use Surinder Singh rights to be accompanied by British or other non-EU family members.) Instead, the UK Government gave British citizens until 29 March 2022 to return to the UK with non-British family members who could make a Surinder Singh application. It was possible to still make late applications until 9 August 2023, at which point the route was completely closed to new applicants².

¹<https://webarchive.nationalarchives.gov.uk/ukgwa/20201218112017/https://www.gov.uk/apply-for-a-uk-residence-card>: "You do not need to apply for a residence card to prove you can live in the UK unless you're both:

- from outside the European Economic Area (EEA) or Switzerland
- an extended family member of someone from the EEA or Switzerland"

² People who have an expired EUSS Family Permit on the basis of their Surinder Singh rights are still able to make a late application for EUSS status if they have reasonable grounds to do so, and those who have pre-settled status on the basis of Surinder Singh are still able to make an application to upgrade their pre-settled status to settled status.

the3million has always regretted that Surinder Singh rights were excluded from the Withdrawal Agreement³, however we accept that the UK Government at the time wanted to end this right for British citizens to return to the UK with non-British family members on an ongoing future basis, and that they intended to provide a grace period for British citizens to make use of the right and return. That said, it cannot have been the intention to deprive people who had already acquired an independent right of permanent residence in the UK from protecting their rights.

Closure of Surinder Singh route under the EU Settlement Scheme

However, the absolute closure of the Surinder Singh route to new applicants as per 9 August 2023 has had the (hopefully unintended) consequence of extreme impact on those non-EU family members of British citizens who had already returned to the UK before Brexit, and who did not realise they needed to make an EUSS application.

The reason for our belief that this harsh consequence (for late Surinder Singh applicants who were already living in the UK before Brexit) was unintended is twofold.

Firstly, a reading of the Explanatory Memorandum accompanying the Statement of Changes for the August 2023 closure of the Surinder Singh route⁴ says *“The routes will remain open to those who are already on them”*. The cohort we are discussing here is arguably already on the Surinder Singh route so should be allowed to submit a late application if they are considered to have reasonable grounds for doing so.

Secondly, there is manifest unfairness when comparing the identical situations of non-EU family members of EU citizens with non-EU family members of British citizens, as we will go on to explain below.

The Home Office have realised and accepted that **non-EU family members of EU citizens** who had an EEA PR right, or an EEA residence card with an expiry date beyond August 2023, may not have realised that they needed to make an EUSS application, and have made explicit provision for these people to continue to be able to make late EUSS applications.

Indeed, the3million and ILPA, together with 55 other organisations, wrote to the Home Office in November 2023 about the EUSS changes affecting late applications, and in particular that many holders of EEA PR documentation *“would have been completely unaware that the legal status of their documents had changed. This was acknowledged by versions 9.0 to 19.0 of the EUSS caseworker guidance”*, and would only become aware of the need to apply to the EUSS when a ‘trigger event’ such as an interaction at the UK border, an employer checking the right to work, or an NHS admission, occurs. The Home Office acknowledged this in its December 2023 reply, promising changes to the EUSS caseworker guidance which *“will take into account factors such as having had a reasonable belief that an earlier application did not need to be made due to having an unexpired EEA BRC.”*⁵

³ “Joint paper with British in Europe on citizens' rights under Article 50”, 23 Jan 2018, <https://the3million.org.uk/publication/2018012302>, section “Citizens who Return to their Member States of Origin”

⁴ <https://www.gov.uk/government/publications/statement-of-changes-to-the-immigration-rules-hc-1496-17-july-2023>

⁵ “Joint letter with ILPA, signed by 55 other organisations, to the Home Office about the 9 August 2023 changes affecting late applications to the EU Settlement Scheme” and “Home Office reply to the3million and ILPA's letter about late applications to the EU Settlement Scheme, including upcoming changes to the Caseworker Guidance.” both available at <https://the3million.org.uk/publication/2023122101>

The EU Settlement Scheme Caseworker Guidance now states that late applications must be considered on a case-by-case basis and highlights that people “*with a residence document issued under the EEA Regulations, indefinite leave to enter or remain under another route or long continuous UK residence identified by the automated checks of tax and helps records*” may have reasonable grounds for a late application.

It would therefore be only fair and reasonable to expect that the same consideration is given to **non-EU family members of British citizens** who held an EEA PR right, or an EEA residence card with an expiry date beyond August 2023, and did not realise that they needed to make an EUSS application. Indeed, people in this cohort would have been even less likely than family members of EU citizens to have realised that the need to apply to the EUSS was relevant to them, as neither they nor their British sponsor would have been nationals of the EU. Many would have moved back to the UK many years ago and entirely legitimately relied on the fact that the Home Office had recognised their right to remain in the UK, with no time limit, to continue to live here without making any further application for immigration status.

All advertising of the EU Settlement Scheme was aimed at EEA/Swiss citizens and their family members. Even though the Home Office held details of those who had EEA Residence documentation, they did not write to them to tell them this documentation was no longer valid. Write outs from the Department of Work and Pensions and HMRC in 2021, to attempt to reach eligible EUSS applicants who had not yet applied, were sent only to EEA/Swiss citizens and their family members.⁶

Yet the family members of British citizens that we are writing about, who had been living entirely lawfully in the UK before Brexit, have unwittingly become unlawful overstayers in the eyes of the Home Office. The parallels with the Windrush scandal are clear.

To illustrate, the3million knows of three such cases, which we describe anonymously below:

1. The first case was relayed to us by a legal advisor, telling us about his client P.

A British citizen B married his wife P outside the EU in the 1980s. B moved to an EU Member State later that year, and P joined her husband in that EU Member State a few years later. The couple lived there continuously until 2010. They did visit the UK in the intervening years. In 2010 they moved to the UK and have lived here ever since.

They have several children all of whom are British and adults now. Four of them live in the UK and one still lives in the EU Member State. Having arrived in the UK in 2010, P secured an EEA Residence Card valid for 5 years, following which she applied for an EEA Permanent Residence Document. Her application was initially refused but her appeal succeeded, and she secured her PR document in 2018 and was issued a Biometric Residence Card valid to 2028.

The EUSS scheme was just coming into being around this time and she had no knowledge about the relevance to her at all. Indeed, she has been a frequent traveller abroad and has never been advised of any issues. Her last trip was last year, and she was granted entry without issue.

She was advised by her niece that BRC’s were being replaced, and she should try to register for an eVisa. That is what prompted her to get advice, and she stumbled upon the problem that her BRC is no longer valid, that she should have made a ‘Surinder Singh’ application to the EUSS, and that since

⁶ Letter from Home Office to the3million, and Memorandum of Understanding between Home Office / DWP on write-outs to benefit claimants without EUSS status, clearly showing intended audience was EU/EEA/Swiss citizens and their family members: <https://the3million.org.uk/publication/2021102401>

August 2023 it is impossible to make a late application because this route has been definitively closed.

It's remarkable that she could now ostensibly be unlawfully in the UK and be status-less after 15 years of lawful residence through no fault of her own at all.

2. The second case was reported directly to the3million via our Report-It tool, by the citizen's wife who is British.

She told us that she and her non-EU husband initially met and married in his home country and then moved to an EU Member State for her work. She is a British citizen, and they have now been married for 28 years, and been living in the UK for over 24 years.

He had been granted an EEA PR document in 2007, which expired in 2017.

In 2017 they tried to apply for a renewal of the document, which was refused on the grounds that they had not provided sufficient evidence of 5 years' continuous residence. This rejection came at the same time as her husband was diagnosed with a progressive neurological condition, which meant they struggled with the paperwork. They spoke to an advisor at the Home Office contact centre at the time who told them that his PR rights were declaratory so there was no need to do anything at the time, which is why they did not formally appeal the refusal. As a non-EU citizen with PR, married to a British citizen, they did not think that they needed to take any action related to Brexit.

Earlier in 2025 they realised their situation and tried to submit a late application to the EUSS. This was rejected as being invalid, due to the Surinder Singh route having now closed. They have been informed that there does not appear to be a solution as it is not possible to make an application under Appendix EU as the route for qualifying family members of British citizens with permanent residence closed in 2023 and it is not possible to apply late unlike other routes under Appendix EU. EEA nationals or their family members applying late under Appendix EU are able to make applications if there is a good reason for the delay, despite the route closing in 2021. The terms of the Withdrawal Agreement do not provide for family members of qualifying British citizens.

They cannot travel to see family, and this is causing huge stress and deterioration of his neurological condition. He is struggling to comprehend the situation, due to his symptoms, and he is extremely worried that he may be separated from his wife who is also his carer. Their only options appear to be a risky and expensive Judicial Review, or the expensive process of applying for a spouse visa, having already lived in the UK for 20 years.

3. The third case was reported to us by a solicitor about their client:

C is a non-EU national who is married to a British citizen. They lived together in an EU country from 2006 before moving back to the UK in 2008.

C was issued with an EEA PR document in 2014, with an expiry date of January 2024.

In 2023, in good time before the expiry date of his PR document, he took legal advice on extending it. He was advised that this was not possible and that he should make an application to the EUSS. It had not occurred to him prior to that date that his permission to stay in the UK would come to an

end prior to the expiry of his PR document (or at all) or that he would need to take any steps to secure his status in the UK.

His legal advisers at the time contacted the EU Resolution Centre and were (wrongly) told that he should submit an online application to the EUSS. He did so in October 2023. He was issued with a Certificate of Application in November 2023 confirming that he had made a valid application.

In September 2024, nearly a year later, he received a letter from the Home Office stating that his application had been rejected as invalid (because he should have used a paper application form) and that in any case the Surinder Singh route had closed to those who did not already have an EUSS Family Permit or pre-settled status on that route.

By this point, he did not have lawful residence in the UK, and so he was required to leave the UK and submit an application from outside the UK under Appendix FM. He and his family struggled to absorb the cost of this. Despite the fact that he has already been living in the UK 17 years, he is now on the 5-year route to settlement and will need to incur the costs of making successive applications for Limited Leave to Remain, including steep Immigration Health Surcharge fees, before he can regain indefinite leave to remain.

Appendix EU change requested

We would urgently request that Appendix EU be changed to allow late applications under the Surinder Singh route for non-EU family members of British citizens, who were already living in the UK by 31 December 2020. This would not frustrate the Home Office's aim to close the Surinder Singh route to future returnees to the UK. However, it would correct the unintended lacuna whereby non-EU family members of British citizens are in a much worse situation than non-EU family members of EU citizens even though the circumstances of both are identical, namely having lived in the UK for a long time and not realising that they needed to apply to the EUSS until a 'trigger event' in their lives occurred.

We look forward to your response.

Yours sincerely,

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Jane Golding, Chair, British in Europe

Zoe Bantleman, Legal Director, Immigration Law Practitioners' Association (ILPA)

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