Right to family reunification

1999/0258(CNS) - 22/09/2003 - Final act

PURPOSE: to determine the conditions for the exercise of the right to family reunification by third country nationals residing lawfully in the territory of the Member States.

LEGISLATIVE ACT: Council Directive 2003/86/EC on the right to family reunification.

CONTENT: the Council adopted the Directive on the right to family reunification. The purpose of this Directive is to determine the conditions under which family reunification is granted to third-country nationals residing lawfully in the territory of the Member States.

The Directive contains a series of useful definitions such as:

- "third country national" means any person who is not a citizen of the Union;
- "refugee" means any third country national or stateless person enjoying refugee status;
- "sponsor" means a third country national residing lawfully in a Member State and applying or whose family members apply for family reunification to be joined with him/her;
- "family reunification" means the entry into and residence in a Member State by family members of a third country national residing lawfully in that Member State in order to preserve the family unit, whether the family relationship arose before or after the resident's entry;
- "residence permit" means any authorisation issued by the authorities of a Member State allowing a third country national to stay legally in its territory;
- "unaccompanied minor" means third country nationals or stateless persons below the age of eighteen, who arrive on the territory of the Member States unaccompanied by an adult responsible by law or custom, and for as long as they are not effectively taken into the care of such a person, or minors who are left unaccompanied after they entered the territory of the Member States.

This Directive shall apply where the sponsor is holding a residence permit issued by a Member State for a period of validity of one year or more who has reasonable prospects of obtaining the right of permanent residence, if the members of his or her family are third country nationals of whatever status.

This Directive shall not apply where the sponsor is:

- applying for recognition of refugee status whose application has not yet given rise to a final decision;
- authorised to reside in a Member State on the basis of temporary protection or applying for authorisation to reside on that basis and awaiting a decision on his status;
- authorised to reside in a Member State on the basis of a subsidiary form of protection in accordance with international obligations, national legislation or the practice of the Member States or applying for authorisation to reside on that basis and awaiting a decision on his status.

Moreover, this Directive shall not apply to members of the family of a Union citizen. This Directive is without prejudice to more favourable provisions of bilateral and multilateral agreements between the Community or the Community and its Member States, on the one hand, and third countries, on the other. This Directive shall not affect the possibility for the Member States to adopt or maintain more favourable provisions.

In accordance with the Directive, family reunification will applyin any case to members of the nuclear family: the sponsor's spouse and the minor children. The minor children referred to in this Article must be below the age of majority set by the law of the Member State concerned and must not be married.

Family members:

The Member States shall authorise the entry and residence of the following family members:

- the sponsor's spouse;
- the minor children of the sponsor and of his/her spouse, including children adopted in accordance with a decision taken by the competent authority in the Member State concerned or a decision which is automatically enforceable due to international obligations of that Member State or must be recognised in accordance with international obligations;
- the minor children including adopted children of the sponsor where the sponsor has custody and the children are dependent on him or her. Member States may authorise the reunification of children of whom custody is shared, provided the other party sharing custody has given his or her agreement;
- the minor children including adopted children of the spouse where the spouse has custody and the children are dependent on him or her. Member States may authorise the reunification of children of whom custody is shared, provided the other party sharing custody has given his or her agreement.

The minor children referred to in this Article must be below the age of majority set by the law of the Member State concerned and must not be married.

By way of derogation, where a child is aged over 12 years and arrives independently from the rest of his /her family, the Member State may, before authorising entry and residence under this Directive, verify whether he or she meets a condition for integration provided for by its existing legislation on the date of implementation of this Directive.

The Member States may, by law or regulation, authorise the entry and residence, pursuant to this Directive and subject to compliance with the conditions laid down in Chapter IV, of the following family members:

- first-degree relatives in the direct ascending line of the sponsor or his or her spouse, where they are dependent on them and do not enjoy proper family support in the country of origin;
- the adult unmarried children of the sponsor or his or her spouse, where they are objectively unable to provide for their own needs on account of their state of health.

The Member States may authorise the entry and residence of the unmarried partner, being a third country national, with whom the sponsor is in a duly attested stable long-term relationship, or of a third country national who is bound to the sponsor by a registered partnership and of the unmarried minor children, including adopted children, as well as the adult unmarried children who are objectively unable to provide for their own needs on account of their state of health, of such persons.

Member States may decide that registered partners are to be treated equally as spouses with respect to family reunification.

In the event of a polygamous marriage, where the sponsor already has a spouse living with him in the territory of a Member State, the Member State concerned shall not authorise the family reunification of a further spouse. Member States may limit the family reunification of minor children of a further spouse and the sponsor.

In order to ensure better integration and to prevent forced marriages Member States may require the sponsor and his/her spouse to be of a minimum age, and at maximum 21 years, before the spouse is able to join him/her.

By way of derogation, Member States may request that the applications concerning family reunification of minor children have to be submitted before the age of 15, as provided for by its existing legislation on the

date of the implementation of this Directive. If the application is submitted after the age of 15, the Member States which decide to apply this derogation shall authorise the entry and residence of such children on grounds other than family reunification.

Submission and examination of the application:

Member States shall determine whether, in order to exercise the right to family reunification, an application for entry and residence shall be submitted to the competent authorities of the Member State concerned either by the sponsor or by the family member or members.

The application shall be accompanied by documentary evidence of the family relationship as well as certified copies of family member(s)' travel documents. The application shall be submitted and examined when the family members are residing outside the territory of the Member State in which the sponsor resides. The competent authorities of the Member State shall give the person, who has submitted the application, written notification of the decision as soon as possible and in any event no later than 9 months from the date on which the application was lodged. Reasons shall be given for the decision rejecting the application. Any consequences of no decision being taken by the end of the period provided for in the first subparagraph shall be determined by the national legislation of the relevant Member State.

Requirements for the exercise of the right to family reunification:

When the application for family reunification is submitted, the Member State concerned may require the person who has submitted the application to provide evidence that the sponsor has:

- accommodation regarded as normal for a comparable family in the same region and which meets the general health and safety standards in force in the Member State concerned;
- sickness insurance in respect of all risks normally covered for its own nationals in the Member State concerned for himself/herself and the members of his/her family;
- stable and regular resources which are sufficient to maintain himself/herself and the members of his /her family, without recourse to the social assistance system of the Member State concerned. Member States may require third country nationals to comply with integration measures, in accordance with national law.

Member States may require the sponsor to have stayed lawfully in their territory for a period not exceeding two years, before having his/her family members join him/her.

Entry and residency of family members:

As soon as the application for family reunification has been accepted, the Member State concerned shall authorise the entry of the family member or members. In that regard, the Member Stateconcerned shall grant such persons every facility for obtaining the requisite visas.

The Member State concerned shall grant the family members a first residence permit of at least one year's duration. This residence permit shall be renewable.

The duration of the residence permits granted to the family member(s) shall in principle not go beyond the date of expiry of the residence permit held by the sponsor.

The sponsor's family members shall be entitled, in the same way as the sponsor, to access to education; access to employment and self-employed activity and access to vocational guidance, initial and further training and retraining.

Not later than after 5 years of residence, and provided that the family member has not been granted a residence permit for reasons other than family reunification, the spouse or unmarried partner and a child who has reached majority shall be entitled, upon application, if required, to an autonomous residence permit, independent of that of the sponsor. Member States may limit the granting of the residence permit referred to in the first subparagraph to the spouse or unmarried partner in cases of breakdown of the family relationship. The Member States may issue an autonomous residence permit to adult children and to relatives in the direct ascending line.

In the event of widowhood, divorce, separation, or death of first-degree relatives in the direct ascending or descending line, an autonomous residence permit may be issued, upon application, if required, to persons who have entered by virtue of family reunification.

Penalties and redress:

Member States may reject an application for entry and residence for the purpose of family reunification, or, if appropriate, withdraw or refuse to renew a family member's residence permit, in the following circumstances: where the conditions laid down by this Directive are not or are no longer satisfied.

When renewing the residence permit, where the sponsor has not sufficient resources without recourse to the social assistance system of the Member State, the Member State shall take into account the contributions of the family members to the household income; where the sponsor and his/her family member(s) do not or no longer live in a real marital or family relationship; where it is found that the sponsor or the unmarried partner is married or is in a stable long-term relationship with another person.

Member States may also reject an application for entry and residence for the purpose of family reunification, or withdraw or refuse to renew the family member's residence permits, where it is shown that false or misleading information, false or falsified documents were used, fraud was otherwise committed or other unlawful means were used; the marriage, partnership or adoption was contracted for the sole purpose of enabling the person concerned to enter or reside in a Member State.

Lastly, the Directive stipulates that periodically, and for the first time not later than 3 October 2007, the Commission shall report to the European Parliament and the Council on the application of this Directive in the Member States and shall propose such amendments as may appear necessary.

ENTRY INTO FORCE: 03/10/2003.

TRANSPOSITION IN THE MEMBER STATES: 03/10/2005.

TERRITORIAL APPLICATION: the Directive shall not apply to United Kingdom, Ireland and Denmark in accordance with the appropriate measures in the Treaty.